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ATF: Explosives Law and Regulations

BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS • DEPARTMENT OF THE TREASURY

ATF P 5400.7(11/82)

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ATF: Explosives Law and Regulations

Federal Law Relating to Explosives

Reproduced below is Federal law relating to explosives, taken from 18 U.S.C. Chapter 40, as amended.

Editor's Note: Chapter 40 added by Title XI of Public Law 91-452, October 15, 1970. Congressional purpose of Title: "The Congress hereby declares that the purpose of this title is to protect interstate and foreign commerce against interference and interruption by reducing the hazard to persons and property arising from misuse and unsafe or insecure storage of explosive materials. It is not the purpose of this title to place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, storage, or use of explosive materials for industrial, mining, agricultural, or other lawful purposes, or to provide for the imposition by Federal regulations of any procedures or requirements other than those reasonably necessary to implement and effectuate the provisions of this title."

Chapter 40. — Importation, Manufacture, Distribution and Storage of Explosive Materials

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Section 841. Definitions

As used in this chapter —

(a) 'Person' means any individual, corporation, company, association, firm, partnership, society, or joint stock company.

(b) 'Interstate or foreign commerce' means commerce between any place in a State and any place outside of that State, or within any possession of the United States (not including the Canal Zone) or the District of Columbia, and commerce between places within the same State but through any place outside of that State. 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States (not including the Canal Zone).

(c) 'Explosive materials' means explosives, blasting agents, and detonators.

(d) Except for the purposes of subsections (d), (e), (f), (g), (h), (i), and (j) of section 844 of this title, 'explosives' means any chemical compound mixture, or device, the primary or common purpose of which is to function by explosion; the term includes, but is not limited to, dynamite and other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord, and igniters. The Secretary shall publish and revise at least annually in the Federal Register a list of these and any additional explosives which he determines to be within the coverage of this chapter. For the purpose of subsections (d), (e), (f), (g), (h), and (i) of section 844 of this title, the term 'explosive' is defined in subsection (j) of such section 844.

(e) 'Blasting agent' means any material or mixture, consisting of fuel and oxidizer, intended for blasting, not otherwise defined as an explosive: Provided, That the finished product, as mixed for use or shipment, cannot be detonated by means of a numbered 8 test blasting cap when unconfined.

(f) 'Detonator' means any device containing a detonating charge that is used for initiating detonation in an explosive: the term includes, but is not limited to, electric blasting caps of instantaneous and delay types, blasting caps for use with safety fuses and detonating-cord delay connectors.

(g) 'Importer' means any person engaged in the business of importing or bringing explosive materials into the United States for purposes of sale or distribution.

(h) 'Manufacturer' means any person engaged in the business of manufacturing explosive materials for purposes of sale or distribution or for his own use.

(i) 'Dealer' means any person engaged in the business of distributing explosive materials at wholesale or retail.

(j) 'Permittee' means any user of explosives for a lawful purpose, who has obtained a user permit under the provisions of this chapter.

(k) 'Secretary' means the Secretary of the Treasury or his delegate.

(l) 'Crime punishable by imprisonment for a term exceeding one year' shall not mean (1) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade,

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or other similar offenses relating to the regulation of business practices as the Secretary may by regulation designate, or (2) any State offense (other than one involving a firearm or explosive) classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less.

(m) 'Licensee' means any importer, manufacturer, or dealer licensed under the provisions of this chapter.

(n) 'Distribute' means sell, issue, give, transfer, or otherwise dispose of.

Section 842. Unlawful acts

(a) It shall be unlawful for any person —

(1) to engage in the business of importing, manufacturing, or dealing in explosive materials without a license issued under this chapter;

(2) knowingly to withhold information or to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive for the purpose of obtaining explosive materials, or a license, permit, exemption, or relief from disability under the provisions of this chapter; and

(3) other than a licensee or permittee knowingly —

(A) to transport, ship, cause to be transported, or receive in interstate or foreign commerce any explosive materials, except that a person who lawfully purchases explosive materials from a licensee in a State contiguous to the State in which the purchaser resides may ship, transport, or cause to be transported such explosive materials to the State in which he resides and may receive such explosive materials in the State in which he resides, if such transportation, shipment, or receipt is permitted by the law of the State in which he resides; or

(B) to distribute explosive materials to any person (other than a licensee or permittee) who the distributor knows or has reasonable cause to believe does not reside in the State in which the distributor resides.

(b) It shall be unlawful for any licensee knowingly to distribute any explosive materials to any person except —

(1) a licensee;

(2) a permittee; or;

(3) a resident of the State where distribution is made and in which the licensee is licensed to do business or a State contiguous thereto if permitted by the law of the State of the purchaser's residence.

(c) It shall be unlawful for any licensee to distribute explosive materials to any person who the licensee has reason to believe intends to transport such explosive materials into a State where the purchase, possession, or use of explosive materials is prohibited or which does not permit its residents to transport or ship explosive materials into it or to receive explosive materials in it.

(d) It shall be unlawful for any licensee knowingly to distribute explosive materials to any individual who:

(1) is under twenty-one years of age;

(2) has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;

(3) is under indictment for a crime punishable by imprisonment for a term exceeding one year;

(4) is a fugitive from justice;

(5) is an unlawful user of marihuana (as defined in section 4761 of the Internal Revenue Code of 1954) or any depressant or stimulant drug (as defined in section 201(v) of the Federal Food, Drug, and Cosmetic Act) or narcotic drug (as defined in section 4721(a) of the Internal Revenue Code of 1954); or

(6) has been adjudicated a mental defective.

(e) It shall be unlawful for any licensee knowingly to distribute any explosive materials to any person in any State where the purchase, possession, or use by such person of such explosive materials would be in violation of any State law or any published ordinance applicable at the place of distribution.

(f) It shall be unlawful for any licensee or permittee willfully to manufacture, import, purchase, distribute, or receive explosive materials without making such records as the Secretary may by regulation require, including, but not limited to, a statement of intended use, the name, date, place of birth, social security number or taxpayer identification number, and place of residence of any natural person to whom explosive materials are distributed. If explosive materials are distributed to a corporation or other business entity, such records shall include the identity and principal and local places of business and the name, date, place of birth, and place of residence of the natural person acting as agent of the corporation or other business entity in arranging the distribution.

(g) It shall be unlawful for any licensee or permittee knowingly to make any false entry in any record which he is required to keep pursuant to this section or regulations promulgated under section 847 of this title.

(h) It shall be unlawful for any person to receive, conceal, transport, ship, store, barter, sell, or dispose of any explosive materials knowing or having reasonable cause to believe that such explosive materials were stolen.

(i) It shall be unlawful for any person —

(1) who is under indictment for, or who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) who is a fugitive from justice;

(3) who is an unlawful user of or addicted to marihuana (as defined in Section 4761 of the Internal Revenue Code of 1954) or any depressant or stimulant drug (as defined in section 201(v) of the Federal Food, Drug, and Cosmetic Act) or narcotic drug (as defined in section 4731(a) of the Internal Revenue Code of 1954); or

(4) who has been adjudicated as a mental defective or who has been committed to a mental institution; to ship or transport any explosive in interstate or foreign commerce or to receive any explosive which has been shipped or transported in interstate or foreign commerce.

(j) It shall be unlawful for any person to store any explosive material in a manner not in conformity with regulations promulgated by the Secretary. In promulgating such regulations, the Secretary shall take into consideration the class, type, and quantity of explosive materials to be stored, as well as the standards of safety and security recognized in the explosives industry.

(k) It shall be unlawful for any person who has knowledge of the theft or loss of any explosive materials from his stock, to fail to report such theft or loss within twenty-four hours of discovery thereof, to the Secretary and to appropriate local authorities.

Section 843. Licenses and user permits

(a) An application for a user permit or a license to import, manufacture, or deal in explosive materials shall be in such form and contain such information as the Secretary shall by regulation prescribe. Each applicant for a license or permit shall pay a fee to be charged as set by the Secretary, said fee not to exceed $200 for each license or permit. Each license or permit shall be valid for no longer than three years from date of issuance and shall be renewable upon the same conditions and subject to the same restrictions as the original license or permit and upon payment of a renewal fee not to exceed one-half of the original fee.

(b) Upon the filing of a proper application and payment of the prescribed fee, and subject to the provisions of this chapter and other applicable laws, the Secretary shall issue to such applicant the appropriate license or permit if —

(1) the applicant (including in the case of a corporation, partnership, or association, any individual possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of the corporation, partnership, or association) is not a person to whom the distribution of explosive materials would be unlawful under section 842(d) of this chapter;

(2) the applicant has not willfully violated any of the provisions of this chapter or regulations issued hereunder;

(3) the applicant has in a State premises from which he conducts or intends to conduct business;

(4) the applicant has a place of storage for explosive materials which meets such standards of public safety and security against theft as the Secretary by regulations shall prescribe; and

(5) the applicant has demonstrated and certified in writing that he is familiar with all published State laws and local ordinances relating to explosive materials for the location in which he intends to do business.

(c) The Secretary shall approve or deny an application within a period of forty-five days beginning on the date such application is received by the Secretary.

(d) The Secretary may revoke any license or permit issued under this section if in the opinion of the Secretary the holder thereof has violated any provision of this chapter or any rule or regulation prescribed by the Secretary under this chapter, or has become ineligible to acquire explosive materials under section 842(d). The Secretary's action under this subsection may be reviewed only as provided in subsection (e)(2) of this section.

(e)(1) Any person whose application is denied or whose license or permit is revoked shall receive a written notice from the Secretary stating the specific grounds upon which such denial or revocation is based. Any notice of a revocation of a license or permit shall be given to the holder of such license or permit prior to or concurrently with the effective date of the revocation.

(2) If the Secretary denies an application for, or revokes a license, or permit, he shall, upon request by the aggrieved party, promptly hold a hearing to review his denial or revocation. In the case of a revocation, the Secretary may upon a request of the holder stay the effective date of the revocation. A hearing under this section shall be *at a location convenient* to the aggrieved party.

The Secretary shall give written notice of his decision to the aggrieved party within a reasonable time after the hearing. The aggrieved party may, within sixty days after receipt of the Secretary's written decision, file a petition with the United States court of appeals for the district in which he resides or has his principal place of business for a judicial review of such denial or revocation, pursuant to sections 701 — 706 of title 5, United States Code.

(f) Licensees and permittees shall make available for inspection at all reasonable times their records kept pursuant to this chapter or the regulations issued hereunder, and shall submit to the Secretary such reports and information with respect to such records and the contents thereof as he shall by regulations prescribe. The Secretary may enter during business hours the premises (including places of storage) of any licensee or permittee, for the purpose of inspecting or examining (1) any records or documents required to be kept by such licensee or permittee, under the provisions of this chapter or regulations issued hereunder, and (2) any explosive materials kept or stored by such licensee or permittee at such premises. Upon the request of any State or any political subdivision thereof, the Secretary may make available to such State or any political subdivision thereof, any information which he may obtain by reason of the provisions of this chapter with respect to the identification of persons within such State or political subdivision thereof, who have purchased or received explosive materials, together with a description of such explosive materials.

(g) Licenses and permits issued under the provisions of subsection (b) of this section shall be kept posted and kept available for inspection on the premises covered by the license and permit.

Section 844. Penalties

(a) Any person who violates subsections (a) through (i) of section 842 of this chapter shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

(b) Any person who violates any other provision of section 842 of this chapter shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(c) Any explosive materials involved or used or intended to be used in any violation of the provisions of this chapter or any other rule or regulation promulgated thereunder or any violation of any criminal law of the United States shall be subject to seizure and forfeiture, and all provisions of the *Internal Revenue Code of 1954 relating to the* seizure, forfeiture, and disposition of firearms, as defined in section 5845(a) of that Code, shall, so far as applicable, extend to seizures and forfeitures under the provisions of this chapter.

(d) Whoever transports or receives, or attempts to transport or receive, in interstate or foreign commerce any explosive with the knowledge or intent that it will be used to kill, injure, or intimidate any individual or unlawfully to damage or destroy any building, vehicle, or other real or personal property, shall be imprisoned for not more than ten years, or fined not more than $10,000, or both; and if personal injury results shall be imprisoned for not more than twenty years or fined not more than $20,000, or both; and if death results, shall be subject to imprisonment for any term of years, or to the death penalty or to life imprisonment as provided in section 34 of this title.

(e) Whoever, through the use of the mail, telephone, telegraph, or other instrument of commerce, willfully makes any threat, or maliciously conveys false information knowing the same to be false, concerning an attempt or alleged attempt being made, or to be made, to kill, injure, or intimidate any individual or unlawfully to damage or destroy any building, vehicle, or other real or personal property by means of an explosive shall be imprisoned for not more than five years or fined not more than $5,000, or both.

(f) Whoever maliciously damages or destroys, or attempts to damage or destroy, by means of an explosive, any building, vehicle, or other personal or real property in whole or in part owned, possessed, or used by, or leased to, the United States, any department or agency thereof, or any institution or organization receiving Federal financial assistance shall be imprisoned for not more than ten years, or fined not more than $10,000, or both; and if personal injury results shall be imprisoned for not more than twenty years, or fined not more than $20,000, or both; and if death results shall be subject to imprisonment for any term of years, or to the death penalty or to life imprisonment as provided in section 34 of this title.

(g) Whoever possesses an explosive in any building in whole or in part owned, possessed, or used by, or leased to, the United States or any department or agency thereof, except with the written consent of the agency, department, or other person responsible for the management of such building, shall be imprisoned for not more than one year, or fined not more than $1,000, or both.

(h) Whoever —

(1) uses an explosive to commit any felony which may be prosecuted in a court of the United States, or

(2) carries an explosive unlawfully during the commission of any felony which may be prosecuted in a court of the United States, shall be sentenced to a term of imprisonment for not less than one year nor more than ten years. In the case of his second or subsequent conviction under this subsection, such person shall be sentenced to a term of imprisonment for not less than five years nor more than twenty-five years, and, notwithstanding any other provision of law, the court shall not suspend the sentence of such person or give him a probationary sentence.

(i) Whoever maliciously damages or destroys, or attempts to damage or destroy, by means of an explosive, any building, vehicle, or other real or personal property used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce shall be imprisoned for not more than ten years or fined not more than $10,000, or both; and if personal injury results shall be imprisoned for not more than twenty years or fined not more than $20,000, or both; and if death results shall also be subject to imprisonment for any term of years, or to the death penalty or to life imprisonment as provided in section 34 of this title.

(j) For the purposes of subsections (d), (e), (f), (g), (h), and (i) of this section, the term 'explosive' means gunpowders, powders used for blasting, all forms of high explosives, blasting materials, fuzes (other than electric circuit breakers), detonators, and other detonating agents, smokeless powders, other explosive or incendiary devices within the meaning of paragraph (5) of section 232 of this title, and any chemical compounds, mechanical mixture, or device that contains any oxidizing and combustible units, or other ingredients, in such proportions, quantities, or packing that ignition by fire, by friction, by concussion, by percussion, or by detonation of the compound, mixture, or device or any part thereof may cause an explosion.

Section 845. Exceptions; relief from disabilities

(a) Except in the case of subsections (d), (e), (g), (h), and (i) of section 844 of this title, this chapter shall not apply to:

(1) any aspect of the transportation of explosive materials via railroad, water, highway, or air which are regulated by the United States Department of Transportation and agencies thereof;

(2) the use of explosive materials in medicines and medicinal agents in the forms prescribed by the official United States Pharmacopeia, or the National Formulary;

(3) the transportation, shipment, receipt, or importation of explosive materials for delivery to any agency of the United States or to any State or political subdivision thereof;

(4) small arms ammunition and components thereof;

(5) commercially manufactured black powder in quantities not to exceed 50 pounds, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers, intended to be used solely for sporting, recreational, or cultural purposes in antique firearms as defined in section 921(a) (16) of title 18 of the United States Code, or in antique devices as exempted from the term 'destructive device' in section 921 (a) (4) of title 18 of the United States Code; and

(6) the manufacture under the regulation of the military department of the United States of explosive materials for, or their distribution to or storage or possession by the military or naval services or other agencies of the United States; or to arsenals, navy yards, depots, or other establishments owned by, or operated by or on behalf of the United States.

(b) A person who had been indicted for or convicted of a crime punishable by imprisonment for a term exceeding one year may make application to the Secretary for relief from the disabilities imposed by this chapter with respect to engaging in the business of importing, manufacturing, or dealing in explosive materials, or the purchase of explosive materials, and incurred by reason of such indictment or conviction, and the Secretary may grant such relief if it is established to his satisfaction that the circumstances regarding the indictment or conviction, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief will not be contrary to the public interest. A licensee or permittee who makes application for relief from the disabilities incurred under this chapter by reason of indictment or conviction, shall not be barred by such indictment or conviction from further operations under his license or permit pending final action on an application for relief filed pursuant to this section.

Section 846. Additional powers of the Secretary

The Secretary is authorized to inspect the site of any accident, or fire, in which there is reason to believe that explosive materials were involved, in order that if any such incident has been brought

about by accidental means, precautions may be taken to prevent similar accidents from occurring. In order to carry out the purpose of this subsection, the Secretary is authorized to enter into or upon any property where explosive materials have been used, are suspected of having been used, or have been found in an otherwise unauthorized location. Nothing in this chapter shall be construed as modifying or otherwise affecting in any way the investigative authority of any other Federal agency. In addition to any other investigatory authority they have with respect to violations or provisions of this chapter, the Attorney General and the Federal Bureau of Investigation, together with the Secretary, shall have authority to conduct investigations with respect to violations of subsection (d), (e), (f), (g), (h), or (i) of section 844 of this title.

Section 847. Rules and regulations

The administration of this chapter shall be vested in the Secretary. The Secretary may prescribe such rules and regulations as he deems reasonably necessary to carry out the provisions of this chapter. The Secretary shall give reasonable public notice, and afford to interested parties opportunity for hearing, prior to prescribing such rules and regulations.

Section 848. Effect on State law

No provision of this chapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which such provision operates to the exclusion of the law of any State on the same subject matter, unless there is a direct and positive conflict between such provision and the law of the State so that the two cannot be reconciled or consistently stand together.

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Commerce in Explosives

Part 55

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Authority: 18 U.S.C. Chapter 40, unless otherwise noted.

Subpart A — Introduction

§55.1 Scope of regulations.

(a) **In general.** The regulations contained in this part relate to commerce in explosives and implement Title XI, Regulation of Explosives (18 U.S.C. Chapter 40; 84 Stat. 952), of the Organized Crime Control Act of 1970 (84 Stat. 922).

(b) **Procedural and substantive requirements.** This part contains the procedural and substantive requirements relative to:

(1) The interstate or foreign commerce in explosive materials;

(2) The licensing of manufacturers and importers of, and dealers in, explosive materials;

(3) The issuance of user permits;

(4) The conduct of business by licensees and operations by permittees;

(5) The storage of explosive materials;

(6) The records and reports required of licensees and permittees;

(7) Relief from disabilities under this part; and

(8) Exemptions, unlawful acts, penalties, seizures, and forfeitures.

§55.2 Relation to other provisions of law.

The provisions in this part are in addition to, and are not in lieu of, any other provision of law, or regulations, respecting commerce in explosive materials. For regulations applicable to commerce in firearms and ammunition, see Part 178 of this chapter. For regulations applicable to traffic in machine guns, destructive devices, and certain other firearms, see Part 179 of this chapter. For statutes applicable to the registration and licensing of persons engaged in the business of manufacturing, importing or exporting arms, ammunition, or implements of war, see section 38 of the Arms Export Control Act (22 U.S.C. 2778), and regulations of Part 47 of this chapter and in Parts 121-128 of Title 22, Code of Federal Regulations. For statutes applicable to nonmailable materials, see 18 U.S.C. 1716 and implementing regulations. For statutes applicable to water quality standards, see 33 U.S.C. 1341.

Subpart B — Definitions

§55.11 Meaning of terms.

When used in this part, terms are defined as follows in this section. Words in the plural form include the singular, and vice versa, and words indicating the masculine gender include the feminine. The terms "includes" and "including" do not exclude other things not named which are in the same general class or are otherwise within the scope of the term defined.

Act. 18 U.S.C. Chapter 40.

Ammunition. Small arms ammunition or cartridge cases, primers, bullets, or smokeless propellants designed for use in small arms, including percussion caps, and 3/32 inch and other external burning pyrotechnic hobby fuses. The term does not include black power.

Approved storage facility. A place where explosive materials are stored, consisting of one or more approved magazines, conforming to the requirements of this part and covered by a license or permit issued under this part.

Artificial barricade. An artificial mound or revetted wall of earth of a minimum thickness of three feet, or any other approved barricade that offers equivalent protection.

ATF officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any function relating to the administration or enforcement of this part.

Barricaded. The effective screening of a magazine containing explosive materials from another magazine, a building, a railway, or a highway, either by a natural barricade or by a artificial barricade. To be properly barricaded, a straight line from the top of any sidewall of the magazine containing explosive materials to the eave line of any other magazine or building, or to a point 12 feet above the center of a railway or highway, will pass through the natural or artificial barricade.

Blasting agent. Any material or mixture, consisting of fuel and oxidizer, that is intended for blasting and not otherwise defined as an explosive; if the finished product, as mixed for use or shipment, cannot be detonated by means of a number 8 test blasting cap when unconfined. A number 8 test blasting cap is one containing 2 grams of a mixture of 80 percent mercury fulminate and 20 percent potassium chlorate, or a blasting cap of equivalent strength. An equivalent strength cap comprises 0.40-0.45 grams of PETN base charge pressed in an aluminum shell with bottom thickness not to exceed 0.03 of an inch, to a specific gravity of not less than 1.4 g/cc., and primed with standard weights of primer depending on the manufacturer.

Bureau. The Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury, Washington, DC.

Business premises. When used with respect to a manufacturer, importer, or dealer, the property on which explosive materials are manufactured, imported, stored or distributed. The premises include the property where the records of manufacturer, importer, or dealer are kept if different than the premises where explosive materials are manufactured, imported, stored or distributed. When used with respect to a user of explosive materials, the property on which the explosive materials are received or stored. The premises includes the property where the records of the users are kept if different than the premises where explosive materials are received or stored.

Crime punishable by imprisonment for a term exceeding one year. Any offense for which the maximum penalty, whether or not imposed, is capital punishment or imprisonment in excess of one year. The term does not include (a) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or (b) any State offense (other than one involving a firearm or explosive) classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less.

Customs officer. Any officer of the Customs Service or any commissioned, warrant, or petty officer of the Coast Guard, or any agent or other person authorized to perform the duties of an officer of the Customs Service.

Dealer. Any person engaged in the business of distributing explosive materials at wholesale or retail.

Detonator. Any device containing a detonating charge that is used for initiating detonation in an explosive. The term includes, but is not limited to, electric blasting caps of instantaneous and delay types, blasting caps for use with safety fuses, detonating-cord delay connectors, and nonelectric instantaneous and delay blasting caps.

Director. The Director, Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury, Washington, DC.

Distribute. To sell, issue, give, transfer, or otherwise dispose of. The term does not include a mere change of possession from a person to his agent or employee in connection with the agency or employment.

District Director. A District Director of Internal Revenue.

Executed under penalties of perjury. Signed with the required declaration under the penalties of perjury as provided on or with respect to the return, form, or other document or, where no form of declaration is required, with the declaration: "I declare under the penalties of perjury that this — (insert type of document, such as, statement, application, request, certificate), including the documents submitted in support thereof, has been examined by me and, to the best of my knowledge and belief, is true, correct, and complete".

Explosive actuated device. Any tool or special mechanized device which is actuated by explosives, but not a propellent actuated device.

Explosive materials. Explosives, blasting agents, water gels and detonators. Explosive materials include, but are not limited to, all items in the List of Explosive Materials provided for in §55.23.

Explosives. Any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion. The term includes, but is not limited to, dynamite and other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord, and igniters.

Fugitive from justice. Any person who has fled from the jurisdiction of any court of record to avoid prosecution for any crime or to avoid giving testimony in any criminal proceeding. The term also includes any person who has been convicted of any crime and has fled to avoid imprisonment.

Hardwood. Oak, maple, ash, hickory, or other hard wood, free from loose knots, spaces, or similar defects.

Highway. Any public street, alley, or road. Public highways of class A to D are highways with an average traffic volume of 3,000 or less vehicles per day as specified in "American Civil Engineering Practice" (Abbett, Vol. 1, Table 46, Sec. 3-74, 1956 Edition, John Wiley and Sons).

Importer. Any person engaged in the business of importing or bringing explosive materials into the United States for purposes of sale or distribution.

Indictment. Includes an indictment or information in any court under which a crime punishable by imprisonment for a term exceeding one year may be prosecuted.

Inhabited building. Any building regularly occupied in whole or in part as a habitation for human beings, or any church, schoolhouse, railroad station, store, or other structure where people are accustomed to assemble, except any building occupied in connection with the manufacture, transportation, storage, or use of explosive materials.

Internal Revenue District. An Internal Revenue District under the jurisdiction of a District Director of Internal Revenue.

Interstate or foreign commerce. Commerce between any place in a State and any place outside of that State, or within any possession of the United States or the District of Columbia, and commerce between places within the same State but through any place outside of that State.

Licensed dealer. A dealer licensed under this part.

Licensed importer. An importer licensed under this part.

Licensed manufacturer. A manufacturer licensed under this part to engage in the business of manufacturing explosive materials for purposes of sale or distribution or for his own use.

Licensed manufacturer-limited. A manufacturer licensed under this part to engage in the business of manufacturing explosive materials for his own use and not for sale or distribution.

Licensee. Any importer, manufacturer, or dealer licensed under this part.

Magazine. Any building or structure, other than an explosives manufacturing building, used for storage of explosive materials.

Manufacturer. Any person engaged in the business of manufacturing explosive materials for purposes of sale or distribution or for his own use.

Manufacturer-limited. Any person engaged in the business of manufacturing explosive materials for his own use and not for sale or distribution.

Mass detonation (mass explosion). Explosive materials mass detonate (mass explode) when a unit or any part of a larger quantity of explosive material explodes and causes all or a substantial part of the remaining material to detonate or explode.

Natural barricade. Natural features of the ground, such as hills, or timber of sufficient density that the surrounding exposures which require protection cannot be seen from the magazine when the trees are bare of leaves.

Number 8 test blasting cap. (See definition of "blasting agent.")

Permittee. Any user of explosives for lawful purpose, who has obtained a user permit under this part.

Person. Any individual, corporation, company, association, firm, partnership, society, or joint stock company.

Plywood. Exterior, construction grade (laminated wood) plywood.

Propellant actuated device. Any tool or special mechanized device or gas generator system which is actuated by a propellant or which releases and directs work through a propellant charge.

Railway. Any steam, electric, or other railroad or railway which carries passengers for hire.

Region. A geographical region of the Bureau of Alcohol, Tobacco and Firearms.

Regional regulatory administrator. The principal regional official responsible for administering regulations in this part.

Service Center Director. A director of an Internal Revenue Service center.

Softwood. Fir, pine, or other soft wood, free from loose knots, spaces, or similar defects.

State. A State of the United States. The term includes the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States.

State of residence. The State in which an individual regularly resides or maintains his home. Temporary stay in a State does not make the State of temporary stay the State of residence.

U.S.C. The United States Code.

User-limited permit. A user permit valid only for a single purchase transaction, a new permit being required for a subsequent purchase transaction.

User permit. A permit issued to a person authorizing him (a) to acquire for his own use explosive materials from a licensee in a State other than the State in which he resides or from a foreign country, and (b) to transport explosive materials in interstate or foreign commerce.

Water gels. Explosives or blasting agents that contain a substantial proportion of water.

Subpart C — Administrative and Miscellaneous Provisions

§55.21 Forms prescribed.

The Director is authorized to prescribe all forms required by this part. All of the information called for in each form shall be furnished.

§55.22 Alternate methods of procedures; emergency variations from requirements.

(a) *Alternate methods or procedures.* The permittee or licensee, on specific approval by the Director as provided by this paragraph, may use an alternate method or procedure in lieu of a method or procedure specifically prescribed in this part. The Director may approve an alternate method or procedure, subject to stated conditions, when he finds that —

(1) Good cause is shown for the use of the alternate method or procedure;

(2) The alternate method or procedure is within the purpose of, and consistent with the effect intended by, the specifically prescribed method or procedure and that the alternate method or procedure is substantially equivalent to that specifically prescribed method or procedure; and

(3) The alternate method or procedure will not be contrary to any provision of law and will not result in an increase in cost to the Government or hinder the effective administration of this part.

Where the permittee or licensee desires to employ an alternate method or procedure, he shall submit a written application to the regional regulatory administrator, for transmittal to the Director. The application shall specifically describe the proposed alternate method or procedure and shall set forth the reasons for it. Alternate methods or procedures may not be employed until the application is approved by the Director. The permittee or licensee shall, during the period of authorization of an alternate method or procedure, comply with the terms of the approved application. Authorization of any alternate method or procedure may be withdrawn whenever, in the judgment of the Director, the effective administration of this part is hindered by the continuation of the authorization. As used in this paragraph, alternate methods or procedures include alternate construction or equipment.

(b) *Emergency variations from requirements.* The Director may approve construction, equipment, and methods of operation other than as specified in this part, where he finds that an emergency exists and the proposed variations from the specified

requirements are necessary and the proposed variations —

(1) Will afford security and protection that are substantially equivalent to those prescribed in this part;

(2) Will not hinder the effective administration of this part; and

(3) Will not be contrary to any provisions of law.

Variations from requirements granted under this paragraph are conditioned on compliance with the procedures, conditions, and limitations set forth in the approval of the application. Failure to comply in good faith with the procedures, conditions, and limitations shall automatically terminate the authority for the variations and the licensee or permittee shall fully comply with the prescribed requirements of regulations from which the variations were authorized. Authority for any variation may be withdrawn whenever, in the judgment of the Director, the effective administration of this part is hindered by the continuation of the variation. Where the licensee or permittee desires to employ an emergency variation, he shall submit a written application to the regional regulatory administrator for transmittal to the Director. The application shall describe the proposed variation and set forth the reasons for it. Variations may not be employed until the application is approved, except when the emergency requires immediate action to correct a situation that is threatening to life or property. Corrective action may then be taken concurrent with the filing of the application and notification of the Director via telephone.

(c) *Retention of approved variations.* The licensee or permittee shall retain, as part of his records available for examination by ATF officers, any application approved by the Director under this section.

§55.23 List of Explosive Materials.

The Director shall compile and publish in the Federal Register a list of Explosive Materials. The list shall be published and revised at least annually.

§55.24 Right of entry and examination.

Any ATF officer may enter during business hours the premises, including places of storage, of any licensee or permittee for the purpose of inspecting or examining any records or documents required to be kept under this part, and any explosive materials kept or stored at the premises.

§55.25 Disclosure of information.

Upon receipt of written request from any State or any political subdivision of a State, the regional regulatory administrator may make available to the State or political subdivision any information which the regional regulatory administrator may obtain under the Act with respect to the identification of persons within the State or political subdivision, who have purchased or received explosive materials, together with a description of the explosive materials.

§55.26 Prohibited shipment, transportation, or receipt of explosive materials.

(a) No person, other than a licensee or permittee, shall transport, ship, cause to be transported, or receive in interstate or foreign commerce any explosive materials. This paragraph does not apply to —

(1) The transportation, shipment, or receipt of explosive materials by a nonlicensed person or nonpermittee who lawfully purchases explosive materials from a licensee in a State contiguous to the purchaser's State of residence if, (i) the purchaser's State of residence has enacted legislation, currently in force, specifically authorizing a resident of that State to purchase explosive materials in a contiguous State, (ii) the provisions of §55.105(c) are fully complied with, and (iii) the purchaser is not otherwise prohibited under paragraph (b) of this section from shipping or transporting explosive materials in interstate or foreign commerce or receiving explosive materials which have been shipped or transported in interstate or foreign commerce; or

(2) The lawful purchase by a nonlicensee or nonpermittee of commercially manufactured black powder in quantities not to exceed 50 pounds, if (i) the black powder is intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices, and (ii) the provisions of §55.105(g) are fully complied with.

(b) No person may ship or transport any explosive material in interstate or foreign commerce or receive any explosive materials which have been shipped or transported in interstate or foreign commerce who (1) is under indictment or information for, or who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year, (2) is a fugitive from justice, (3) is an unlawful user of or addicted to marijuana, or any depressant or stimulant drug, or narcotic drug (as these terms are defined in the Controlled Substances Act; 21 U.S.C. 802), or (4) has been adjudicated as a mental defective or has been committed to a mental institution.

§55.27 Out-of-State disposition of explosive materials.

No nonlicensee or nonpermittee shall distribute any explosive materials to any other nonlicensee or nonpermittee who the distributor knows or has reasonable cause to believe does not reside in the State in which the distributor resides.

§55.28 Stolen explosive materials.

No person shall receive, conceal, transport, ship, store, barter, sell, or dispose of any stolen explosive materials knowning or having reasonable cause to believe that the explosive materials were stolen.

§55.29 Unlawful storage.

No person shall store any explosive materials in a manner not in conformity with this part.

§55.30 Reporting theft or loss of explosive materials.

(a) Any licensee or permittee who has knowledge of the theft or loss of any explosive materials from his stock shall, within 24 hours of discovery, report the theft or loss by telephoning 800-424-9555 (nationwide toll free number) and on ATF F 5400.5 (formerly Form 4712) in accordance with the instructions on the form. Theft or loss of any explosive materials shall also be reported to appropriate local authorities.

(b) Any other person, except a carrier of explosive materials, who has knowledge of the theft or loss of any explosive materials from his stock shall, within 24 hours of discovery, report the theft or loss by telephoning 800-424-9555 (nationwide toll free number) and in writing to the nearest ATF office. Theft or loss shall be reported to appropriate local authorities.

(c) Reports of theft or loss of explosive materials under paragraphs (a) and (b) must include the following information, if known:

(1) The manufacturer or brand name.

(2) The manufacturer's marks of identification (date and shift code).

(3) Quantity (applicable quantity units, such as pounds of explosives, number of detonators, etc.).

(4) Description (dynamite, blasting agents, detonators, etc.).

(5) Size (length and diameter).

(d) A carrier of explosive materials who has knowledge of the theft or loss of any explosive materials shall, within 24 hours of discovery, report the theft or loss by telephoning 800-424-9555 (nationwide toll free number). Theft or loss shall also be reported to appropriate local authorities. Reports of theft or loss of explosive materials by carriers shall include the following information, if known:

(1) The manufacturer or brand name.

(2) Quantity (applicable quantity units, such as pounds of explosives, number of detonators, etc.).

(3) Description (Class A, B, or C explosives, or nitro-carbo-nitrates, as classified by the U.S. Department of Transportation in the Hazardous Materials Table).

§55.31 Inspection of site accidents or fires; right of entry.

Any ATF officer may inspect the site of any accident or fire in which there is reason to believe that explosive materials were involved. Any ATF officer may enter into or upon any property where explosive materials have been used, are suspected of having been used, or have been found in an otherwise unauthorized location.

§55.32 Special explosive devices.

The Director may exempt certain explosive actuated devices, explosive actuated tools, or similar devices from the requirements of this part. A person who desires to obtain an exemption under this section for any special explosive device, which as designed does not constitute a public safety or security hazard, shall submit a written request to the Director. Each request shall be executed under the penalties of perjury and contain a complete and accurate description of the device, the name and address of the manufacturer or importer, the purpose of and use for which it is intended, and any photographs, diagrams, or drawings as may be necessary to enable the Director to make a determination. The Director may require that a sample of the device be submitted for examination and evaluation. If it is not possible to submit the device, the person requesting the exemption shall advise the Director and designate the place where the device will be available for examination and evaluation.

Subpart D — Licenses and Permits

(a) Each person intending to engage in business as an importer or manufacturer of, or a dealer in, explosive materials, including black powder, shall, before commencing business, obtain the license required by this subpart for the business to be operated. Each person who intends to acquire for use explosive materials from a licensee in a State other than the State in which he resides, or from a foreign country, or who intends to transport explosive materials in interstate or foreign commerce, shall obtain a permit under this subpart; except that it is not necessary to obtain a permit if the user intends to lawfully purchase —

(1) Explosive materials from a licensee in a State contiguous to the user's State of residence and the user's State of residence has enacted legislation, currently in force, specifically authorizing a resident of that State to purchase explosive materials in a contiguous State, or

(2) Commercially manufactured black powder in quantities not to exceed 50 pounds, intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices.

(b) Each person intending to engage in business as an explosive materials importer, manufacturer, or dealer shall file an application, with the required fee (see §55.42), with the Service Center Director for the internal revenue district in which his business premises are to be located. A license shall, subject to law, entitle the licensee to transport, ship, and receive explosive materials in interstate or foreign commerce, and to engage in the business specified by the license, at the location described on the license (and in the case of a licensed manufacturer, on site within the same region), for the period stated on the license. A separate license must be obtained for each business premises at which the applicant is to manufacture, import, or distribute explosive materials; except under the following circumstances:

(1) A separate license shall not be required for storage facilities operated by the licensee as an integral part of one business premises or to cover a location used by the licensee solely for maintaining the records required by this part.

(2) A separate license shall not be required of a licensed manufacturer with respect to his on-site manufacturing within the same region.

(3) It shall not be necessary for a licensed importer or a licensed manufacturer (for purposes of sale or distribution) to also obtain a dealer's license in order to engage in business on his licensed premises as a dealer in explosive materials.

(c) Except as provided in paragraph (a) of this section, each person intending to acquire explosive materials from a licensee in a State other than a State in which he resides, or from a foreign country, or who intends to transport explosive materials in interstate or foreign commerce, shall file an application, with the required fee (see §55.43), with the Service Center Director for the internal revenue district in which is located his legal residence or principal place of business. A permit shall, subject to law, entitle the permittee to acquire, transport, ship, and receive in interstate or foreign commerce explosive materials of the class authorized by this permit. Only one permit is required under this part.

§55.42 License fees.

(a) Each applicant shall pay a fee for obtaining a license, a separate fee being required for each business premises, as follows:

(1) Manufacturer — $50.
(2) Manufacturer-limited (nonrenewable) — $5.
(3) Importer — $50.
(4) Dealer — $20.

(b) Each applicant for a renewal of a license shall pay a fee for a three year license as follows:

(1) Manufacturer — $25.
(2) Importer — $25.
(3) Dealer — $10.

§55.43 Permit fees.

(a) Each applicant shall pay a fee for obtaining a permit as follows:

(1) User — $20.
(2) User-limited (nonrenewable) — $2.

(b) Each applicant for a renewal of a user permit shall pay a fee of $10 for a three year permit.

§55.44 License or permit fee not refundable.

No refund of any part of the amount paid as a license or permit fee will be made where the operations of the licensee or permittee are, for any reason, discontinued during the period of an issued license or permit. However, the license or permit fee submitted with an application for a license or permit will be refunded if that application is denied, withdrawn, or abandoned, or if a license is cancelled subsequent to having been issued through administrative error.

§55.45 Original license or permit.

(a) Any person who intends to engage in business as an explosive materials importer, manufacturer, or dealer, or who has not timely submitted application for renewal of a previous license issued under this part, shall file with the Service Center Director for the internal revenue district in which the applicant is to do business an application, ATF F 5400.13. The application must be executed under the penalties of perjury and the penalties imposed by 18 U.S.C. 844(a). The application is to be accompanied by the appropriate fee in the form of (1) cash, or (2) money order or check made payable to the Internal Revenue Service. ATF F 5400.13 may be obtained from any regional regulatory administrator.

(b) Any person, except as provided in §55.41(a), who intends to acquire explosive materials from a licensee in a State other than the State in which he resides, or from a foreign country, or who intends to transport explosive materials in interstate or foreign commerce, or who has not timely submitted application for renewal of a previous permit issued under this part, shall file with the Service Center Director for the internal revenue district in which is located his legal residence or principal place of business an application, ATF F 5400.16. The application must be executed under the penalties of perjury and the penalties imposed by 18 U.S.C. 844(a). The application is to be accompanied by the appropriate fee in the form of (1) cash, or (2) money order or check made payable to the Internal Revenue Service. ATF F 5400.16 may be obtained from any regional regulatory administrator.

§55.46 Renewal of license or permit.

(a) If a licensee or permittee intends to continue the business or operation described on a license or permit issued under this part after the expiration date of the license or permit, he shall, unless otherwise notified in writing by the regional regulatory administrator, execute and file prior to the expiration of his license or permit an application for license renewal, ATF F 5400.14 (Part III), or an application for permit renewal, ATF F 5400.15 (Part III), accompanied by the required fee, with the Service Center Director for the internal revenue district in which the business premises are located, or in the case of a permittee, in which is located his legal residence or principal place of business. In the event the licensee or permittee does not timely file a renewal application, he shall file an original application as required by §55.45, and obtain the required license or permit in order to continue business or operations.

(b) A license issued to a manufacturer-limited is not renewable and is only valid for 30 days from the date of issuance. A user-limited permit is not renewable and is valid for a single purchase transaction. All applications for manufacturer-limited licenses or user-limited permits must be filed on ATF F 5400.13 or ATF F 5400.16 as required by § 55.45.

§55.47 Procedure by Service Center Director.

Upon receipt of an application for an original license or an original permit, or an application for renewal of a license or renewal of a permit, the Service Center Director shall deposit the fee accompanying the license or permit application and forward the application to the regional regulatory administrator. Where an application is filed with an insufficient fee, the application and any fee submitted will be returned.

§55.48 Abandoned application.

Upon receipt of an incomplete or improperly executed application, the applicant will be notified of the deficiency in the application. If the application is not corrected and returned within 30 days following the date of notification, the application will be considered as having been abandoned and the license or permit fee returned.

§55.49 Issuance of license or permit.

(a) The regional regulatory administrator shall issue a license or permit if (1) a properly executed application for the license or permit is received, and (2) through further inquiry or investigation, or otherwise, it is found that the applicant is entitled to the license or permit. The license or permit and one copy will be forwarded to the applicant, except that in the case of a user-limited permit, the original only shall be issued. Each license or permit will bear a serial number and this number may be assigned to the licensee or permittee to whom issued for as long as he maintains continuity of renewal in the same region.

(b) The regional regulatory administrator shall approve a properly executed application for a license or permit, if:

(1) The applicant is 21 years of age or over;

(2) The applicant (including, in the case of a corporation, partnership, or association, any individual possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of the corporation, partnership, or

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association) is not a person to whom distribution of explosive materials is prohibited under the Act;

(3) The applicant has not willfully violated any provisions of the Act or this part;

(4) The applicant has not knowingly withheld information or has not made any false or fictitious statement intended or likely to deceive, in connection with his application;

(5) The applicant has in a State, premises from which he conducts business or operations subject to license or permit under the Act or from which he intends to conduct business or operations;

(6) The applicant has storage for the class (as described in §55.182 or §55.202) of explosive materials described on the application, unless he establishes to the satisfaction of the regional regulatory administrator that the business or operations to be conducted will not require the storage of explosive materials.

(7) The applicant has certified in writing that he is familiar with and understands all published State laws and local ordinances relating to explosive materials for the location in which he intends to do business; and

(8) The applicant for a license has submitted the certificate required by section 21 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1341).

(c) The regional regulatory administrator shall approve or deny any application for license or permit within the 45-day period beginning on the date a properly executed application was received by the Service Center Director. However, when an applicant for license or permit renewal is a person who is, under the provisions of §55.83 or §55.142, conducting business or operations under a previously issued license or permit, action regarding the application will be held in abeyance pending the completion of the proceedings against the applicant's existing license or permit, or renewal application, or final action by the Director on an application for relief submitted under §55.142, as the case may be.

§55.50 Correction of error on license or permit.

(a) Upon receipt of a license or permit issued under this part, each licensee or permittee shall examine the license or permit to insure that the information on it is accurate. If the license or permit is incorrect, the licensee or permittee shall return the license or permit to the regional regulatory administrator with a statement showing the nature of the error. The regional regulatory administrator shall correct the error, if the error was made in his office, and return the license or permit. However, if the error resulted from information contained in the licensee's or permittee's application for the license or permit, the regional regulatory administrator shall require the licensee or permittee to file an amended application setting forth the correct information and a statement explaining the error contained in the application. Upon receipt of the amended application and a satisfactory explanation of the error, the regional regulatory administrator shall make the correction on the license or permit and return it to the licensee or permittee.

(b) When the regional regulatory administrator finds through any means other than notice from the licensee or permittee that an incorrect license or permit has been issued, (1) the regional regulatory administrator may require the holder of the incorrect license or permit to return the license or permit for correction, and (2) if the error resulted from information contained in the licensee's or permittee's application for the license or permit, the regional regulatory administrator shall require the licensee or permittee to file an amended application setting forth the correct information, and a statement satisfactorily explaining the error contained in the application. The regional regulatory administrator then shall make the correction on the license or permit and return it to the licensee or permittee.

§55.51 Duration of license or permit.

An original license or permit is issued for a period of one year. A renewal license or permit is issued for a period of three years. However, a manufacturer-limited license is issued for a period of 30 days and a user-limited permit is valid only for a single purchase transaction.

§55.52 Limitations on license or permit.

(a) The license covers the business and class (as described in §55.182 or §55.202) of explosive materials specified in the license at the licensee's business premises (see §55.41(b)).

(b) The permit is valid with respect to the type of operations and class (as described in §55.182 or §55.202) of explosive materials specified in the permit.

§55.53 License and permit not transferable.

Licenses and permits issued under this part are not transferable to another person. In the event of the lease, sale, or other transfer of the business or operations covered by the license or permit, the successor must obtain the license or permit required by this part before commencing business or opera-

tions. However, for rules on right of succession, see §55.59.

§55.54 Change of address.

During the term of a license or permit, a licensee or permittee may move his business or operations to a new address at which he intends to regularly carry on his business or operations, without procuring a new license or permit. However, in every case, the licensee or permittee shall —

(a) Give notification of the new location of the business or operations to the regional regulatory administrator for the regions from which or to which the removal is to be made or the region within the move is to be made at least 10 days before the move; and

(b) Submit his license or permit, and any copies furnished with the license or permit, to the regional regulatory administrator for the region to which or within which the move is to be made. The regional regulatory administrator will approve the license or permit, and any copies, to show the new location and the new license or permit number (if any). The approved license or permit, and any copies, will then be returned to the licensee or permittee.

§55.55 Change in class of explosive materials.

A licensee or permittee who intends to change the class of explosive materials described in his license or permit from a lower to a higher classification (see §55.182 or §55.202) shall file an application on ATF F 5400.13 or on ATF F 5400.16 with the regional regulatory administrator for an amended license or permit. If the change in class of explosive materials would require a change in magazines, the amended application must include a description of the type of construction as prescribed in this part. Business or operations with respect to the new class of explosive materials may not be commenced before issuance of the amended license or amended permit. Upon receipt of the amended license or amended permit, the licensee or permittee shall submit his superseded license or superseded permit and any copies furnished with the license or permit to the regional regulatory administrator.

§55.56 Change in trade name.

A licensee or permittee continuing to conduct business or operations at the location shown on his license or permit is not required to obtain a new license or permit by reason of a mere change in trade name under which he conducts his business or operations. However, the licensee or permittee shall furnish his license or permit and any copies furnished with the license or permit for endorsement of the change to the regional regulatory administrator for the region in which the licensee or permittee conducts his business or operations, within 30 days from the date the licensee or permittee begins his business or operations under the new trade name.

§55.57 Change of control.

In the case of a corporation or association holding a license or permit under this part, if actual or legal control of the corporation or association changes, directly or indirectly, whether by reason of change in stock ownership or control (in the corporation holding a license or permit or in any other corporation), by operation of law, or in any other manner, the licensee or permittee shall, within 30 days of the change, give written notification executed under the penalties of perjury, to the regional regulatory administrator. Upon expiration of the license or permit, the corporation or association shall file an ATF F 5400.13 or an ATF F 5400.16 as required by §55.45, and pay the fee prescribed in §55.42(b) or §55.43(b).

§55.58 Continuing partnerships.

Where, under the laws of the particular State, the partnership is not terminated on death or insolvency of a partner, but continues until the winding up of the partnership affairs is completed, and the surviving partner has the exclusive right to the control and possession of the partnership assets for the purpose of liquidation and settlement, the surviving partner may continue to conduct the business or operations under the license or permit of the partnership. If the surviving partner acquires the business or operations on completion of settlement of the partnership, he shall obtain a license or permit in his own name from the date of acquisition, as provided in §55.45. The rule set forth in this section will also apply where there is more than one surviving partner.

§55.59 Right of succession by certain persons.

(a) Certain persons other than the licensee or permittee may secure the right to carry on the same explosive materials business or operations at the same business premises for the remainder of the term of license or permit. These persons are:

(1) The surviving spouse or child, or executor, administrator, or other legal representative of a deceased licensee or permittee; and

(2) A receiver or trustee in bankruptcy, or an assignee for benefit of creditors:

(b) In order to secure the right of succession, the person or persons continuing the business or operations shall submit the license or permit and all copies furnished with the license or permit for endorsement of the succession to the regional regulatory administrator for the region in which the business or operations are conducted, within 30 days from the date on which the successor begins to carry on the business or operations.

§55.60 Certain continuances of business or operations.

A licensee or permittee who furnishes his license or permit to the regional regulatory administrator for correction, amendment, or endorsement, as provided in this subpart, may continue his business or operations while awaiting its return.

§55.61 Discontinuance of business or operations.

Where an explosive materials business or operations is either discontinued or succeeded by a new owner, the owner of the business or operations discontinued or succeeded shall, within 30 days, furnish notification of the discontinuance or succession and submit his license or permit and any copies furnished with the license or permit to the regional regulatory administrator for the region in which his business or operations was located. (See also §55.128.)

§55.62 State or other law.

A license or permit issued under this part confers no right or privilege to conduct business or operations, including storage, contrary to State or other law. The holder of a license or permit issued under this part is not, by reason of the rights and privileges granted by that license or permit, immune from punishment for conducting an explosive materials business or operations in violation of the provisions of any State or other law. Similarly, compliance with the provisions of any State or other law affords no immunity under Federal law or regulations.

§55.63 Explosives magazine changes.

(a) General.

(1) The requirements of this section are applicable to magazines used for other than temporary (under 24 hours) storage of explosives.

(2) A magazine is considered suitable for the storage of explosives if the construction requirements of this part are met during the time explosives are stored in the magazine.

(3) A magazine is considered suitable for the storage of explosives if positioned in accordance with the applicable table of distances as specified in this part during the time explosives are stored in the magazine.

(4) For the purposes of this section, notification of the regional regulatory administrator may be by telephone or in writing. However, if notification of the regional regulatory administrator is in writing it must be at least three business days in advance of making changes in construction to an existing magazine or constructing a new magazine, and at least five business days in advance of using any reconstructed magazine or added magazine for the storage of explosives.

(b) *Exception.* Mobile or portable type 5 magazines are exempt from the requirements of paragraphs (c) and (d) of this section, but must otherwise be in compliance with paragraphs (a)(2) and (3) of this section during the time explosives are stored in such magazines.

(c) *Changes in magazine construction.* A licensee or permittee who intends to make changes in construction of an existing magazine shall notify the regional regulatory administrator describing the proposed changes prior to making any changes. Unless otherwise advised by the regional regulatory administrator, changes in construction may commence after explosives are removed from the magazine. Explosives may not be stored in a reconstructed magazine before the regional regulatory administrator has been notified in accordance with paragraph (a)(4) of this section that the changes have been completed.

(d) *Additional magazines.* A licensee or permittee who intends to construct or acquire additional magazines shall notify the regional regulatory administrator in accordance with paragraph (a)(4) of this section describing the additional magazines and the class and quantity of explosives to be stored in the magazine. Unless otherwise advised by the regional regulatory administrator, additional magazines may be constructed, or acquired magazines may be used for the storage of explosives. Explosives must not be stored in a magazine under construction. The regional regulatory administrator must be notified that construction has been completed.

Subpart E — License and Permit Proceedings

§55.71 Opportunity for compliance.

Except in cases of willfulness or those in which the public interest requires otherwise, and the regional regulatory administrator so alleges in the notice of denial of an application or revocation of a license or permit, no license or permit will be revoked or renewal application denied without first calling to the attention of the licensee or permittee the reasons for the contemplated action and affording him an opportunity to demonstrate or achieve compliance with all lawful requirements and to submit facts, arguments, or proposals of adjustment. The notice of contemplated action, ATF F 5400.12, will afford the licensee or permittee 15 days from the date of receipt of the notice to respond. If no response is received within the 15 days, or if after consideration of relevant matters presented by the licensee or permittee, the regional regulatory administrator finds that the licensee or permittee is not likely to abide by the law and regulations, he will proceed as provided in §55.74.

§55.72 Denial of initial application.

Whenever the regional regulatory administrator has reason to believe that an applicant for an original license or permit is not eligible to receive a license or permit under the provisions of §55.49, he shall issue a notice of denial on ATF F 5400.11. The notice will set forth the matters of fact and law relied upon in determining that the application should be denied, and will afford the applicant 15 days from the date of receipt of the notice in which to request a hearing to review the denial. If no request for a hearing is filed within that time, a copy of the application, marked "Disapproved", will be returned to the applicant.

§55.73 Hearing after initial application is denied.

If the applicant for an original license or permit desires a hearing, he shall file a request with the regional regulatory administrator within 15 days after receipt of the notice of denial. The request should include a statement of the reasons for a hearing. On receipt of the request, the regional regulatory administrator shall refer the matter to an administrative law judge who shall set a time and place (see §55.77) for a hearing and shall serve notice of the hearing upon the applicant and the regional regulatory administrator at least 10 days in advance of the hearing date. The hearing will be conducted in accordance with the hearing procedures prescribed in Part 200 of this chapter (see §55.82). Within a reasonable time after the conclusion of the hearing, and as expeditiously as possible, the administrative law judge shall render his recommended decision. He shall certify to the complete record of the proceedings before him and shall immediately forward the complete certified record, together with four copies of his recommended decision, to the regional regulatory administrator for decision.

§55.74 Denial of renewal application or revocation or license or permit.

If following the opportunity for compliance under §55.71, or without opportunity for compliance under §55.71, as circumstances warrant, the regional regulatory administrator finds that the licensee or permittee is not likely to comply with the law or regulations or is otherwise not eligible to continue operations authorized under his license or permit, the regional regulatory administrator shall issue a notice of denial of the renewal application or revocation of the license or permit, ATF F 5400.11 or ATF F 5400.10, as appropriate. In either case, the notice will set forth the matters of fact constituting the violations specified, dates, places, and the sections of law and regulations violated. The notice will, in the case of revocation of a license or permit, specify the date on which the action is effective, which date will be on or after the date the notice is served on the licensee or permittee. The notice will also advise the licensee or permittee that he may, within 15 days after receipt of the notice, request a hearing and, if applicable, a stay of the effective date of the revocation of his license or permit.

§55.75 Hearing after denial of renewal application or revocation of license or permit.

If a licensee or permittee whose renewal application has been denied or whose license or permit has been revoked desires a hearing, he shall file a request for a hearing with the regional regulatory administrator. In the case of the revocation of a license or permit, he may include a request for a stay of the effective date of the revocation. On receipt of the request the regional regulatory administrator shall advise the licensee or permittee whether the stay of the effective date of the revocation is granted. If the stay of the effective date of the revocation is granted, the regional regulatory ad-

ministrator shall refer the matter to an administrative law judge who shall set a time and place (see §55.77) for a hearing and shall serve notice of the hearing upon the licensee or permittee and the regional regulatory administrator at least 10 days in advance of the hearing date. If the stay of the effective date of the revocation is denied, the licensee or permittee may request an immediate hearing. In this event, the regional regulatory administrator shall immediately refer the matter to an administrative law judge who shall set a date and place for a hearing, which date shall be no later than 10 days from the date the licensee or permittee requested an immediate hearing. The hearing will be held in accordance with the applicable provisions of Part 200 of this chapter. Within a reasonable time after the conclusion of the hearing, and as expeditiously as possible, the administrative law judge shall render his decision. He shall certify to the complete record of the proceeding before him and shall immediately forward the complete certified record, together with two copies of his decision, to the regional regulatory administrator, serve one copy of his decision on the licensee or permittee or his counsel, and transmit a copy to the attorney for the Government.

§55.76 Action by regional regulatory administrator.

(a) *Initial application proceedings.* If, upon receipt of the record and the recommended decision of the administrative law judge, the regional regulatory administrator decides that the license or permit should be issued, he shall approve the application, briefly stating, for the record, his reasons. If he contemplates that the denial should stand, he shall serve a copy of the administrative law judge's recommended decision on the applicant, informing the applicant of his contemplated action and affording the applicant not more than 10 days in which to submit proposed findings and conclusions or exceptions to the recommended decision with supporting reasons. If the regional regulatory administrator, after consideration of the record of the hearing and of any proposed findings, conclusions, or exceptions filed with him by the applicant, approves the findings, conclusions and recommended decision of the administrative law judge, he shall issue the license or permit or disapprove the application accordingly. If he disapproves the findings, conclusions, and recommendation of the administrative law judge, in whole or in part, he shall by order make such findings and conclusions as in his opinion are warranted by the law and the facts in the record. Any decision of the regional regulatory administrator ordering the disapproval of an initial application for a license or permit shall state the findings and conclusions upon which it is based, including his ruling upon each proposed finding, conclusion, and exception to the administrative law judge's recommended decision, together with a statement of his findings and conclusions, and reasons or basis for his findings and conclusions, upon all material issues of fact, law or discretion presented on the record. A signed duplicate original of the decision will be served upon the applicant and the original copy containing certificate of service will be placed in the official record of the proceedings. If the decision of the regional regulatory administrator is in favor of the applicant, he shall issue the license or permit, to be effective on issuance.

(b) *Renewal application and revocation proceedings.* Upon receipt of the complete certified records of the hearing, the regional regulatory administrator shall enter an order confirming the revocation of the license or permit, or disapproving the application, in accordance with the administrative law judge's findings and decision, unless he disagrees with the findings and decision. A signed duplicate original of the order, ATF F 5400.9, will be served upon the licensee or permittee and the original copy containing certificate of service will be placed in the official record of the proceedings. If the regional regulatory administrator disagrees with the findings and decision of the administrative law judge, he shall file a petition with the Director for review of the findings and decision, as provided in §55.79. In either case, if the renewal application denial is sustained, a copy of the application marked "Disapproved" will be returned to the applicant. If the renewal application denial is reversed, a license or permit will be issued to become effective on expiration of the license or permit being renewed, or on the date of issuance, whichever is later. If the proceedings involve the revocation of a license or permit which expired before a decision is in favor of the licensee or permittee, the regional regulatory administrator shall:

(1) If renewal application was timely filed and a stay of the effective date of the revocation was granted, issue a license or permit effective on the date of issuance;

(2) If renewal application was not timely filed but a stay of the effective date of the revocation had been granted, request that a renewal application be filed and, following that, issue a license or permit to be effective on issuance; or

(3) If a stay of the effective date of the revocation had not been granted, request that an application be filed as provided in §55.45, and process it in the same manner as for an application for an original license or permit.

(c) *Curtailment of stay of revocation effective date.* If, after approval of a request for a stay of the effective date of an order revoking a license or permit but before actions are completed under this subpart, the regional regulatory administrator finds that it is contrary to the public interest for the licensee or permittee to continue the operations or activities covered by his license or permit, the regional regulatory administrator may issue a notice of withdrawal of the approval, effective on the date of issuance. Notice of withdrawal will be served upon the licensee or permittee in the manner provided in §55.81.

§55.77 Designated place of hearing.

The designated place of hearing set as provided in §55.73 or §55.75, will be at the location convenient to the aggrieved party.

§55.78 Representation at a hearing.

An applicant, licensee, or permittee may be represented by an attorney or other person recognized to practice before the Bureau of Alcohol, Tobacco and Firearms as provided in 31 CFR Part 8, if he has otherwise complied with the applicable requirements of §§601.521-601.527 of 26 CFR. The regional regulatory administrator shall be represented in proceedings under §§55.73 and 55.75 by an attorney in the office of the chief counsel or regional counsel who is authorized to execute and file motions, briefs, and other papers in the proceedings, on behalf of the regional regulatory administrator, in his own name as "Attorney for the Government".

§55.79 Appeal on petition to the Director.

An appeal to the Director is not required prior to filing an appeal with the U.S. Court of Appeals for judicial review. An appeal may be taken by the applicant, licensee, or permittee to the Director from a decision resulting from a hearing under §55.73 or §55.75. An appeal may also be taken by a regional regulatory administrator from a decision resulting from a hearing under §55.75 as provided in §55.76(b). The appeal shall be taken by filing a petition for review on appeal with the Director within 15 days of the service of an administrative law judge's decision or an order. The petition will set forth facts tending to show (a) action of an arbitrary nature, (b) action without reasonable warrant in fact, or (c) action contrary to law and regulations. A copy of the petition will be filed with the regional regulatory administrator or served on the applicant, licensee, or permittee, as the case may be. In the event of appeal, the regional regulatory administrator shall immediately forward the complete original record, by certified mail, to the Director for his consideration, review, and disposition as provided in Subpart I of Part 200 of this chapter. When, on appeal, the Director affirms the initial decision of the regional regulatory administrator or the administrative law judge, as the case may be, the initial decision will be final.

§55.80 Court review.

An applicant, licensee, or permittee may, within 60 days after receipt of the decision of the administrative law judge or the final order of the regional regulatory administrator or the Director, file a petition for a judicial review of the decision, with the U.S. Court of Appeals for the district in which he resides or has his principal place of business. The Director, upon notification that a petition has been filed, shall have prepared a complete transcript of the record of the proceedings. The regional regulatory administrator or the Director, as the case may be, shall certify to the correctness of the transcript of the record, forward one copy to the attorney for the Government in the review of the case, and file the original record of the proceedings with the original certificate in the U.S. Court of Appeals.

§55.81 Service on applicant, licensee, or permittee.

All notices and other formal documents required to be served on an applicant, licensee, or permittee under this subpart will be served by certified mail or by personal delivery. Where service is by personal delivery, the signed duplicate original copy of the formal document will be delivered to the applicant, licensee, or permittee, or, in the case of a corporation, partnership, or association, by delivering it to an officer, manager, or general agent, or to its attorney of record.

§55.82 Provisions of Part 200 made applicable.

The provisions of Subpart G of Part 200 of this chapter, as well as those provisions of Part 200 relative to failure to appear, withdrawal of an application or surrender of a permit, the conduct of hearings before an administrative law judge, and record of testimony, are hereby made applicable to application, license, and permit proceedings under this subpart to the extent that they are not contrary to or incompatible with this subpart.

§55.83 Operations by licensees or permittees after notice of denial or revocation.

In any case where a notice of revocation has been issued and a request for a stay of the effective date of the revocation has not been granted, the licensee or permittee shall not engage in the activities covered by the license or permit pending the outcome of proceedings under this subpart. In any case where notice of revocation has been issued but a stay of the effective date of the revocation has been granted, the licensee or permittee may continue to engage in the activities covered by his license or permit unless, or until, formally notified to the contrary; *Provided,* That in the event the license or permit would have expired before proceedings under this subpart are completed, timely renewal application must have been filed to continue the license or permit beyond its expiration date. In any case where a notice of denial of a renewal application has been issued, the licensee or permittee may continue to engage in the activities covered by the existing license or permit after the date of expiration of the license or permit until proceedings under this subpart are completed.

Subpart F — Conduct of Business or Operations

§55.101 Posting of license or permit.

A license or permit issued under this part, or a copy of a license or permit, will be posted and available for inspection on the business premises at each place where explosive materials are manufactured, imported, or distributed.

§55.102 Authorized operations by permittees and certain licensees.

(a) *In general.* The license issued to a manufacturer-limited does not authorize that licensee to engage in another class of business required to be licensed under the Act or this part. Therefore, if a licensed manufacturer-limited intends to manufacture explosive materials for purposes of sale or distribution or to deal in explosive materials, he shall qualify for the appropriate license. Similarly, a permit issued under this part does not authorize the permittee to engage in the business of manufacturing, importing, or dealing in explosive materials. Accordingly, if a permittee's operations bring him within the definition of a manufacturer, importer, or dealer under this part, he shall qualify for the appropriate license.

(b) *Distributions of surplus stocks.* Licensed manufacturers-limited and permittees are not authorized to engage in the business of sale or distribution of explosive materials. However, these licensees or permittees may dispose of surplus stocks of explosive materials to other licensees or permittees in accordance with §55.103, and to nonlicensees or to nonpermittees in accordance with §55.105(d).

§55.103 Transactions among licensees/permittees.

(a) *General.*

(1) A licensed importer, licensed manufacturer or licensed dealer selling or otherwise distributing explosive materials (or a permittee or a licensed manufacturer-limited disposing of surplus stock to another licensee or permittee) who has the certified information required by this section may sell or distribute explosive materials to a licensee or permittee for not more than 45 days following the expiration date of the distributee's license or permit, unless the distributor knows or has reason to believe that the distributee's authority to continue business or operations under this part has been terminated.

(2) A licensed importer, licensed manufacturer or licensed dealer selling or otherwise distributing explosive materials (or a permittee or a licensed manufacturer-limited disposing of surplus stock to another licensee or permittee) shall verify the license or permit status of the distributee prior to the release of explosive materials ordered, as required by this section.

(3) Licensees or permittees desiring to return explosive materials to a licensed manufacturer may do so without obtaining a certified copy of the manufacturer's license.

(4) Where possession of explosive materials is transferred at the distributor's premises, the distributor shall in all instances verify the identity of the person accepting possession on behalf of the distributee before relinquishing possession. Before the delivery at the distributor's premises of explosive materials to an employee of a licensee or permittee, or to an employee of a carrier transporting explosive materials to a licensee or permittee, the distributor delivering explosive materials shall obtain an executed ATF F 5400.8 from the employee before releasing the explosive materials. The ATF F 5400.8 must contain all of the information required on the form and required by this part.

Example 1. An ATF F 5400.8 is required when:

a. An employee of the purchaser takes possession at the distributor's premises.

b. An employee of a carrier hired by the purchaser takes possession at the distributor's premises.

Example 2. An ATF F 5400.8 is not required when:

a. An employee of the distributor takes possession of the explosives for the purpose of transport to the purchaser.

b. An employee of a carrier hired by the distributor takes possession of the explosives for the purpose of transport to the purchaser.

(b) *License/permit verification of individuals.*

(1) The distributee shall furnish a certified copy (or, in the case of a user-limited, the original) of the license or permit. The certified copy need be furnished only once during the current term of the license or permit. Also, a licensee need not furnish certified copies of licenses to other licensed locations operated by such licensee.

(2) The distributor may obtain any additional verification as the distributor deems necessary.

(c) *License/permit verification of business organizations.*

(1) A business organization may (in lieu of furnishing a certified copy of a license) furnish the distributor a certified list which contains the name, address, license number and date of license expiration of each licensed location. The certified list need be furnished only once during the current term of the license or permit. Also, a business organization need not furnish a certified list to other licensed locations operated by such business organization.

(2) A business organization shall, prior to ordering explosive materials, furnish the licensee or permittee a current certified list of the representatives or agents authorized to order explosive materials on behalf of the business organization showing the name, address, and date and place of birth of each representative or agent. A licensee or permittee shall not distribute explosive materials to a business organization on the order of a person who does not appear on the certified list of representatives or agents and, if the person does appear on the certified list, the licensee or permittee shall verify the identity of such person.

(d) *Licensee/permittee certified statement.*

(1) A licensee or permittee ordering explosive materials from another licensee or permittee shall furnish a current, certified statement of the intended use of the explosive materials; e.g., resale, mining, quarrying, agriculture, construction, road building, oil well drilling, seismographic research, to the distributor.

(2) For individuals, the certified statement of intended use must specify the name, address, date and place of birth, and social security number of the distributee.

(3) For business organizations, the certified statement of intended use must specify the taxpayer identification number, the identity and the principal and local places of business.

(4) The licensee or permittee purchasing explosive materials need revise the furnished copy of the certified statement only when the information is no longer current.

(e) *User-limited permit transactions.*

A user-limited permit issued under the provisions of this part is valid for only a single purchase transaction and is not renewable (see §55.51). Accordingly, at the time a user-limited permittee orders explosive materials, the licensed distributor shall write on the front of the user-limited permit the transaction date, his signature, and the distributor's license number prior to returning the permit to the user-limited permittee.

§55.104 Certified copy of license or permit.

Except as provided in §55.49(a), each person issued a license or permit under this part shall be furnished together with his license or permit a copy for his certification. If a person desires an additional copy of his license or permit for certification and for use under §55.103, he shall —

(a) Make a reproduction of the copy of his license or permit and execute the certification on it;

(b) Make a reproduction of his license or permit, enter on the reproduction the statement: "I certify that this is a true copy of a *(insert the word license or permit)* issued to me to engage in the specified business or operations", and sign his name next to the statement; or

(c) Submit a request, in writing, for certified copies of his license or permit to the regional regulatory administrator for the region in which the license or permit was issued. The request will show the name, trade name (if any), and address of the licensee or permittee and the number of copies of the license or permit desired. There is a fee of $1 for each copy of a license or permit issued by the regional regulatory administrator under this paragraph. Fee payment must accompany each request for additional copies of a license or permit. The fee

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must be paid by (1) cash, or (2) money order or check made payable to the Bureau of Alcohol, Tobacco and Firearms.

§55.105 Distributions to nonlicensees and nonpermittees.

(a) This section will apply in any case where distribution of explosive materials to the distributee is not otherwise prohibited by the Act or this part.

(b) Except as provided in paragraph (c) of this section, a licensed importer, licensed manufacturer, or licensed dealer may distribute explosive materials to a nonlicensee or nonpermittee if the nonlicensee or nonpermittee is a resident of the same State in which the licensee's business premises are located, and the nonlicensee or nonpermittee furnishes to the licensee the explosives transaction record, ATF F 5400.4, required by §55.126. Disposition of ATF F 5400.4 will be made in accordance with §55.126.

(c) A licensed importer, licensed manufacturer, or licensed dealer may sell or distribute explosive materials to a resident of a State contiguous to the State in which the licensee's place of business is located if the purchaser's State or residence has enacted legislation, currently in force, specifically authorizing a resident of that State to purchase explosive materials in a contiguous State and the purchaser and the licensee have, prior to the distribution of the explosive materials, complied with all the requirements of paragraphs (b), (e), and (f) of this section applicable to intrastate transactions occuring on the licensee's business premises.

(d) A licensed manufacturer-limited or a permittee may dispose of surplus stocks of explosive materials to a nonlicensee or nonpermittee if the nonlicensee or nonpermittee is a resident of the same State in which the licensee's or permittee's business premises or operations are located, or is a resident of a State contiguous to the State in which the licensee's or permittee's place of business or operations are located, and if the requirements of paragraphs (b), (c), (e) and (f) of this section are fully met.

(e) A licensed importer, licensed manufacturer, or licensed dealer selling or otherwise distributing explosive materials to a business entity shall verify the identity of the representative or agent of the business entity who is authorized to order explosive materials on behalf of the business entity. Each business entity ordering explosive materials shall furnish the distributing licensee prior to or with the first order of explosive materials a current certified list of the names of representatives or agents authorized to order explosive materials on behalf of the business entity. The business entity ordering explosive materials is responsible for keeping the certified list current. A licensee shall not distribute explosive materials to a business entity on the order of a person whose name does not appear on the certified list.

(f) Where the possession of explosive materials is transferred at the distributor's premises, the distributor shall in all instances verify the identity of the person accepting possession on behalf of the distributee before relinquishing possession. Before the delivery at the distributor's premises of explosive materials to an employee of a nonlicensee or nonpermittee, or to an employee of a carrier transporting explosive materials to a nonlicensee or nonpermittee, the distributor delivering explosive materials shall obtain an executed ATF F 5400.8 from the employee before releasing the explosive materials. The ATF F 5400.8 must contain all of the information required on the form and by this part. (See examples in §55.103(a).)

(g) A licensee or permittee disposing of surplus stocks may sell or distribute commercially manufactured black powder in quantities of 50 pounds or less to a nonlicensee or nonpermittee if —

(1) The black powder is intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices; and

(2) The nonlicensee or nonpermittee furnishes to the licensee the transaction record, ATF F 5400.3, required by §55.130. *Refer to Industry Circular 82-8.*

§55.106 Certain Prohibited distributions

(a) A licensee shall not distribute explosive materials to any person not licensed or holding a permit under this part, who the licensee knows or has reason to believe does not reside in the State in which the licensee's place of business is located. This paragraph does not apply to the distribution of explosive materials to a resident of a State contiguous to the State in which the licensee's place of business is located, if the requirements of §55.105(c) are fully met.

(b) A licensee shall not distribute any explosive materials to any person —

(1) Who the licensee knows is less than 21 years of age;

(2) In any State where the purchase, possession, or use by a person of explosive materials would be in violation of any State law or any published ordinance applicable at the place of distribution;

(3) Who the licensee has reason to believe intends to transport the explosive materials into a

State where the purchase, possession, or use of explosive materials is prohibited or which does not permit its residents to transport or ship explosive materials into the State or to receive explosive materials into the State; or

(4) Who the licensee has reasonable cause to believe intends to use the explosive materials for other than a lawful purpose.

(c) A licensee shall not distribute any explosive materials to any person knowing or having reason to believe that the person —

(1) Is, except as provided under §55.142(d) and (e), under indictment or information for, or was convicted in any court of, a crime punishable by imprisonment for a term exceeding 1 year;

(2) Is a fugitive from justice;

(3) Is an unlawful user of marijuana, or any depressant or stimulant drug, or narcotic drug (as these terms are defined in the Controlled Substances Act, 21 U.S.C. 802); or

(4) Was adjudicated as a mental defective or was committed to a mental institution.

(d) The provisions of this section to not apply to the purchase of commercially manufactured black powder in quantities not to exceed 50 pounds, intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices, if the requirements of §55.105(g) are fully met.

§55.107 Record of transactions.

Each licensee and permittee shall keep records of explosive materials as required by Subpart G of this part.

§55.108 Importation.

(a) Explosive materials imported or brought into the United States by a licensed importer or permittee may be released from customs custody to the licensed importer or permittee upon proof of his status as a licensed importer or permittee. Proof of status must be made by the licensed importer or permittee furnishing to the customs officer a certified copy of his license or permit (see §55.103).

(b) A nonlicensee or nonpermittee may import or bring into the United States commercially manufactured black powder in quantities not to exceed 50 pounds. Upon submitting to the customs officer completed ATF F 5400.3, certifying that the black powder is intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices, black powder may be released from customs custody. The disposition of the executed ATF F 5400.3 will be in accordance with the instructions on the form. *Refer to Industry Circular 82-8.*

(c) The provisions of this section are in addition to, and are not in lieu of, any applicable requirement under 27 CFR Part 47.

§55.109 Identification of explosive materials.

(a) Each licensed manufacturer of explosive materials shall legibly identify by marking all explosive materials he manufactures for sale or distribution. The marks required by this section must identify the manufacturer and the location, date, and shift of manufacture. The licensed manufacturer shall place on each cartridge, bag, or other immediate container of explosive materials manufactured for sale or distribution the required mark which shall also be placed on the outside container, if any, used for their packaging.

(b) *Exceptions.*

(1) Licensed manufacturers of blasting caps are only required to place the identification marks prescribed in paragraph (a) on the containers used for the packaging of blasting caps.

(2) The Director may authorize other means of identifying explosive materials upon receipt of a letter application from the licensed manufacturer showing that other identification is reasonable and will not hinder the effective administration of this part.

(3) The Director may authorize the use of other means of identification on fireworks instead of marks prescribed in paragraph (a).

Subpart G — Records and Reports

§55.121 General.

(a) (1) Licensees and permittees shall keep records pertaining to explosive materials in permanent form (i.e., commercial invoices, record books) and in the manner required in this subpart.

(2) Licensees and permittees shall keep records required by this subpart on the business premises for five years from the date a transaction occurs or until discontinuance of business or operations by the

licensee or permittee. (See also §55.128 for discontinuance of business or operations.)

(b) ATF officers may enter the premises of any licensee or permittee for the purpose of examining or inspecting any record or document required by or obtained under this part (see §55.24). Section 843(f) of the Act requires licensees and permittees to make all required records available for examination or inspection at all reasonable times. Section 843(f) of the Act also requires licensees and permittees to submit all reports and information relating to all required records and their contents, as the regulations in this part prescribe.

(c) Each licensee and permittee shall maintain all records of importation, production, shipment, receipt, sale, or other disposition, whether temporary or permanent, of explosive materials as the regulations in this part prescribe. Sections 842(f) and 842(g) of the Act make it unlawful for any licensee or permittee knowingly to make any false entry in, or fail to make entry in, any record required to be kept under the Act and the regulations in this part.

§55.122 Records maintained by licensed importers.

(a) Each licensed importer shall take true and accurate physical inventories which will include all explosive materials on hand required to be accounted for in the records kept under this part. The licensed importer shall take a special inventory (1) at the time of commencing business, which is the effective date of the license issued upon original qualification under this part; (2) at the time of changing the location of his business to another region; (3) at the time of discontinuing business; and (4) at any time the regional regulatory administrator may in writing require. Each special inventory is to be prepared in duplicate, the original of which is submitted to the regional regulatory administrator, and the duplicate retained by the licensed importer. If a special inventory specified by paragraph (a)(1) through (4) of this section has not been taken during the calendar year, at least one physical inventory will be taken. However, the record of the yearly inventory, other than a special inventory required by paragraph (a)(1) through (4) of this section, will remain on file for inspection instead of being sent to the regional regulatory administrator. (See also §55.127.)

(b) Each licensed importer shall, not later than the close of the next business day following the date of importation or other acquisition of explosive materials, enter the following information in a separate record:

(1) Date of importation or other acquisition.

(2) Name or brand name of manufacturer and country of manufacture.

(3) Manufacturer's marks of identification.

(4) Quantity (applicable quantity units, such as pounds of explosives, number of detonators, etc.).

(5) Description (dynamite (dyn), blasting agents (ba), detonators (det), etc.) and size (length and diameter).

(c) Each licensed importer shall, not later than the close of the next business day following the date of distribution of any explosive materials to another licensee or a permittee, enter in a separate record the following information:

(1) Date of disposition.

(2) Name or brand name of manufacture and country of manufacture.

(3) Manufacturer's marks of identification.

(4) Quantity (applicable quantity units, such as pounds of explosives, number of detonators, etc.).

(5) Description (dynamite (dyn), blasting agents (ba), detonators (det), etc.) and size (length and diameter).

(6) License or permit number of licensee or permittee to whom the explosive materials are distributed.

(d) The regional regulatory administrator may authorize alternate records to be maintained by a licensed importer to record his distribution of explosive materials when it is shown by the licensed importer that alternate records will accurately and readily disclose the information required by paragraph (c) of this section. A licensed importer who proposes to use alternate records shall submit a letter application to the regional regulatory administrator and shall describe the proposed alternate records and the need for them. Alternate records are not to be employed by the licensed importer until approval is received from the regional regulatory administrator.

(e) Each licensed importer shall maintain separate records of the sales or other distribution made of explosive materials to nonlicensees or nonpermittees. These records are maintained as prescribed by §55.126.

(f) Each licensed importer shall maintain separate records of sales or other distribution made to nonlicensees or nonpermittees of commercially manufactured black powder in quantities not to exceed 50 pounds, intended to be used solely for sporting, recreational, or cultural purposes in an-

tique firearms or in antique devices. These records are maintained as prescribed by §55.130. *Refer to Industry Circular 82-8.*

§55.123 Records maintained by licensed manufacturers.

(a) Each licensed manufacturer shall take true and accurate physical inventories which will include all explosive materials on hand required to be accounted for in the records kept under this part. The licensed manufacturer shall take a special inventory (1) at the time of commencing business, which is the effective date of the license issued upon original qualification under this part; (2) at the time of changing the location of his premises to another region; (3) at the time of discontinuing business; and (4) at any other time the regional regulatory administrator may in writing require. Each special inventory is to be prepared in duplicate, the original of which is submitted to the regional regulatory administrator, and the duplicate retained by the licensed manufacturer. If a special inventory required by paragraph (a)(1) through (4) of this section has not been taken during the calendar year, at least one physical inventory will be taken. However, the record of the yearly inventory, other than a special inventory required by paragraph (a)(1) through (4) of this section, will remain on file for inspection instead of being sent to the regional regulatory administrator. (See also §55.127.)

(b) Each licensed manufacturer shall not later than the close of the next business day following the date of manufacture or other acquisition of explosive materials, enter the following information in a separate record:

(1) Date of manufacture or other acquisition.

(2) Manufacturer's marks of identification.

(3) Quantity (applicable quantity units, such as pounds of explosives, number of detonators, etc.).

(4) Name, brand name or description (dynamite (dyn), blasting agents (ba), detonators (det), etc.) of the product and size (length and diameter).

(c) Each licensed manufacturer shall, not later than the close of the next business day following the date of distribution of any explosive materials to another licensee or a permittee, enter in a separate record the following information:

(1) Date of disposition.

(2) Name or brand name of manufacturer or name of importer, as applicable, if acquired other than by his own manufacture.

(3) Manufacturer's marks of identification.

(4) Quantity (applicable quantity units, such as pounds of explosives, number of detonators, etc.).

(5) Description (dynamite (dyn), blasting agents (ba), detonators (det), etc.) and size (length and diameter).

(6) License or permit number of licensee or permittee to whom the explosive materials are distributed.

(d) Each licensed manufacturer who manufactures explosive materials for his own use shall, not later than the close of the next business day following the date of use, enter in a separate record the following information:

(1) Date of use.

(2) Quantity (applicable quantity units, such as pounds of explosives, number of detonators, etc.).

(3) Description (dynamite (dyn), blasting agents (ba), detonators (det), etc.) and size (length and diameter).

Exception — A licensed manufacturer is exempt from the recordkeeping requirements of this subsection if the explosive materials are manufactured for his own use and used within a 24 hour period at the same site.

(e) The regional regulatory administrator may authorize alternate records to be maintained by a licensed manufacturer to record his distribution or use of explosive materials when it is shown by the licensed manufacturer that alternate records will accurately and readily disclose the information required by paragraph (c) of this section. A licensed manufacturer who proposes to use alternate records shall submit a letter application to the regional regulatory administrator and shall describe the proposed alternate records and the need for them. Alternate records are not to be employed by the licensed manufacturer until approval is received from the regional regulatory administrator.

(f) Each licensed manufacturer shall maintain separate records of the sales or other distribution made of explosive materials to nonlicensees or nonpermittees. These records are maintained as prescribed by §55.126.

(g) Each licensed manufacturer shall maintain separate records of sales or other distribution made to nonlicensees or nonpermittees of commercially manufactured black powder in quantities not to exceed 50 pounds, intended to be used solely for sporting, recreational or cultural purposes in antique firearms or in antique devices. These records are maintained as prescribed by §55.130. *Refer to Industry Circular 82-8.*

§55.124 Records maintained by licensed dealers.

(a) Each licensed dealer shall take true and accurate physical inventories which will include all

explosive materials on hand required to be accounted for in the records kept under this part. The licensed dealer shall take a special inventory (1) at the time of commencing business, which is the effective date of the license issued upon original qualification under this part (2) at the time of changing the location of his premises to another region; (3) at the time of discontinuing business; and (4) at any other time the regional regulatory administrator may in writing require. Each special inventory is to be prepared in duplicate, the original of which is submitted to the regional regulatory administrator, and the duplicate retained by the licensed dealer. If a special inventory required by paragraph (a)(1) through (4) of this section has not been taken during the calendar year, at least one physical inventory will be taken. However, the record of the yearly inventory, other than a special inventory required by paragraph (1) through (4) of this section, will remain on file for inspection instead of being sent to the regional regulatory administrator. (See also §55.127.)

(b) Each licensed dealer shall, not later than the close of the next business day following the date of purchase or other acquisition of explosive materials (except as provided in paragraph (d) of this section), enter the following information in a separate record:

(1) Date of acquisition.

(2) Name or brand name of manufacturer and name of importer (if any).

(3) Manufacturer's marks of identification.

(4) Quantity (applicable quantity units, such as pounds of explosives, number of detonators, etc.).

(5) Description (dynamite (dyn), blasting agents (ba), detonators (det), etc.) and size (length and diameter).

(6) Name, address, and license or permit number of the person from whom the explosive materials are received.

(c) Each licensed dealer shall, not later than the close of the next business day following the date of use (if the explosives are used by the dealer) or the date of distribution of any explosive materials to another licensee or a permittee (except as provided in paragraph (d) of this section), enter in a separate record the following information:

(1) Date of disposition.

(2) Name or brand name of manufacturer and name of importer (if any).

(3) Manufacturer's marks of identification.

(4) Quantity (applicable quantity units, such as pounds of explosives, number of detonators, etc.).

(5) Description (dynamite (dyn), blasting agents (ba), detonators (det), etc.) and size (length and diameter).

(6) License or permit number of licensee or permittee to whom the explosive materials are distributed.

(d) When a commercial record is kept by a licensed dealer showing the purchase or other acquisition information required for the permanent record prescribed by paragraph (b) of this section, or showing the distribution information required for the permanent record prescribed by paragraph (c) of this section, the licensed dealer acquiring or distributing the explosive materials may, for a period not exceeding seven days following the date of acquisition of distribution of the explosive materials, delay making the required entry into the permanent record of acquisition or distribution. However, until the required entry of acquisition or disposition is made in the permanent record, the commercial record must be (1) kept by the licensed dealer separate from other commercial documents kept by the licensee, and (2) readily available for inspection on the licensed premises.

(e) The regional regulatory administrator may authorize alternate records to be maintained by a licensed dealer to record his acquisition or disposition of explosive materials, when it is shown by the licensed dealer that alternate records will accurately and readily disclose the required information. A licensed dealer who proposes to use alternate records shall submit a letter application to the regional regulatory administrator and shall describe the proposed alternate records and the need for them. Alternate records are not to be employed by the licensed dealer until approval is received from the regional regulatory administrator.

(f) Each licensed dealer shall maintain separate records of the sales or other distribution made of explosive materials to nonlicensees or nonpermittees. These records are maintained as prescribed by §55.126.

(g) Each licensed dealer shall maintain separate records of the sales or other distribution made to nonlicensees or nonpermittees of commercially manufactured black powder in quantities not to exceed 50 pounds, intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices. These records are maintained as prescribed by §55.130. *Refer to Industry Circular 82-8.*

§55.125 Records maintained by licensed manufacturers-limited and permittees.

(a) Each licensed manufacturer-limited and each permittee will take true and accurate physical inventories which will include all explosive materials on hand required to be accounted for in the records kept under this part. The licensed manufacturer-limited or permittee shall take a special inventory (1) at the time of commencing business, which is the effective date of the license or permit issued upon original qualification under this part; (2) at the time of changing the location of his premises to another region; (3) at the time of discontinuing business; and (4) at any other time the regional regulatory administrator may in writing require. Each special inventory is to be prepared in duplicate, the original of which is submitted to the regional regulatory administrator and the duplicate retained by the licensee or permittee. If a special inventory required by paragraph (a)(1) through (4) of this section has not been taken during the calendar year, a permittee is required to take at least one physical inventory. However, the record of the yearly inventory, other than a special inventory required by paragraph (a)(1) through (4) of this section, will remain on file for inspection instead of being sent to the regional regulatory administrator. (See also §55.127).

(b)(1) Each licensed manufacturer-limited shall, not later than the close of the next business day following the date of disposition of surplus stocks of explosive materials to another licensee or to a permittee, enter in a separate record the information prescribed in §55.123(c).

(2) Each licensed manufacturer-limited shall maintain separate records of disposition of surplus stocks of explosive materials to nonlicensees or nonpermittees as prescribed by §55.126.

(3) Each licensed manufacturer-limited shall maintain separate records of disposition of surplus stocks of commercially manufactured black powder in quantities not to exceed 50 pounds, intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices, as prescribed by §55.130. *Refer to Industry Circular 82-8*

(c) Each permittee shall, not later than the close of the next business day following the date of acquisition of explosive materials, enter the following information in a separate record:

(1) Date of acquisition.

(2) Name or brand name of manufacturer.

(3) Manufacturer's marks of identification.

(4) Quantity (applicable quantity units, such as pounds of explosives, number of detonators, etc.).

(5) Description (dynamite (dyn), blasting agents (ba), detonators (det), etc.) and size (length and diameter).

(6) Name, address, and license number of the persons from whom the explosive materials are received.

(d) Each permittee shall, not later than the close of the next business day following the date of disposition of surplus explosive materials to another permittee or a licensee, enter in a separate record the information prescribed in §55.124(c).

(e) Each permittee shall maintain separate records of disposition of surplus stocks of explosive materials to nonlicensees or nonpermittees as prescribed in §55.126.

(f) Each permittee shall maintain separate records of disposition of surplus stocks of commercially manufactured black powder in quantities not to exceed 50 pounds, intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices, as prescribed in §55.130. *Refer to Industry Circular 82-8*

(g) The regional regulatory administrator may authorize alternate records to be maintained by a permittee to record his acquisition of explosive materials, when it is shown by the permittee that alternate records will accurately and readily disclose the required information. A permittee who proposes to use alternate records shall submit a letter application to the regional regulatory administrator and shall describe the proposed alternate records and the need for them. Alternate records are not to be employed by the permittee until approval is received from the regional regulatory administrator. *Refer to Industry Circular 82-8*

§55.126 Explosives transaction record.

(a) A licensee or permittee shall not temporarily or permanently distribute explosive materials to any person, other than another licensee or permittee, unless he records the transaction on an explosives transaction record, ATF F 5400.4.

(b) Before the distribution of explosive materials to a nonlicensee or nonpermittee who is a resident of the State in which the licensee or permittee maintains his business premises, or to a nonlicensee or nonpermittee who is not a resident of the State in which the licensee or permittee maintains his business premises and is acquiring explosive materials under §55.105(c), the licensee or permittee distributing the explosive materials shall obtain an executed ATF F 5400.4 from the distribu-

tee which contains all of the information required on the form and by the regulations in this part.

(c) Completed ATF F 5400.4 is to be retained by the licensee or permittee as part of his permanent records in accordance with paragraph (d) of this section.

(d) Each ATF F 5400.4 is retained in numerical (by transaction serial number) order commencing with "1" and continuing in regular sequence. When the numbering of any series reaches "1,000,000," the licensee or permittee may recommence the series. The recommenced series is to be given an alphabetical prefix or suffix. Where there is a change in proprietorship, or in the individual, firm corporate name or trade name, the series in use at the time of the change may be continued.

(e) The requirements of this section are in addition to any other recordkeeping requirement contained in this part.

(f) A licensee or permittee may obtain, upon request, a supply of ATF F 5400.4 from the Director.

§55.127 Daily summary of magazine transactions.

In taking the inventory required by §§55.122, 55.123, 55.124, and 55.125, a licensee or permittee shall enter the inventory in a record of daily transactions to be kept at each magazine of an approved storage facility; however, these records may be kept at one central location on the business premises if separate records of daily transactions are kept for each magazine. Not later than the close of the next business day, each licensee and permittee shall record by manufacturer's name or brand name, the total quantity received in and removed from each magazine during the day, and the total remaining on hand at the end of the day. Any discrepancy which might indicate a theft or loss of explosive materials is to be reported in accordance with §55.30.

§55.128 Discontinuance of business.

Where an explosive materials business or operations is discontinued and succeeded by a new licensee or permittee, the records required by this subpart are to appropriately reflect this information and be delivered to the successor. Where discontinuance of the business or operations is absolute, the records required in this subpart are to be delivered within 30 days following the business or operations discontinuance to the regional regulatory administrator for the region in which the business was operated. Where State law or local ordinance requires the delivery of records to other responsible authority, the regional regulatory administrator may arrange for the delivery of the records required by this subpart to that authority (see also §55.61).

§55.129 Exportation.

Exportation of explosive materials is to be in accordance with the applicable provisions of section 38 of the Arms Export Control Act (22 U.S.C. 2778) and implementing regulations. However, a licensed importer, licensed manufacturer, or licensed dealer exporting explosive materials shall maintain records showing the manufacture or acquisition of explosive materials as required by this part and records showing the quantity, the manufacturer's name or brand name of explosive materials, the name and address of the foreign consignee of the explosive materials, and the date the explosive materials were exported.

§55.130 Transaction record for black powder to be used in antique firearms or in antique devices.

(a) A licensee or permittee shall not sell or otherwise distribute to a nonlicensee or nonpermittee commercially manufactured black powder in quantities of 50 pounds or less, intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices, unless he records the transaction on ATF F 5400.3.

(b) Before the distribution of the black powder in paragraph (a) of this section to a nonlicensee or nonpermittee who is acquiring it under the provisions contained in §55.105(g), the licensee or permittee distributing the black powder shall obtain an executed ATF F 5400.3 from the distributee. The ATF F 5400.3 is to contain all the information required on the form and by the regulations in this part.

(c) ATF F 5400.3 is retained by the licensee or permittee as part of his permanent records in accordance with paragraph (d) of this section.

(d) Each ATF F 5400.3 is retained in numerical (by transaction serial number) order commencing with "1" and continuing in regular sequence. When the numbering of any series reaches "1,000,000", the licensee or permittee may recommence the series. The recommenced series is then given an alphabetical prefix or suffix. Where there is a change in proprietorship, or in the individual, firm, corporate name, or trade name, the series in use at the time of the change may be continued.

(e) The requirements of this section are in addition to any other recordkeeping requirement contained in this part.

(f) A licensee or permittee may obtain, upon request, a supply of ATF F 5400.3 from the Director. *Refer to Industry Circular 82-8*

Subpart H — Exemptions

§55.141 Exemptions.

(a) *General.* This part does not apply with respect to:

(1) Any aspect of the transportation of explosive materials via railroad, water, highway, or air which is regulated by the U.S. Department of Transportation and its agencies.

(2) The use of explosive materials in medicines and medicinal agents in the forms prescribed by the official United States Pharmacopoeia or the National Formulary.

(3) The transportation, shipment, receipt, or importation of explosive materials for delivery to any agency of the United States or to any State or its political subdivision.

(4) Small arms ammunition and components of small arms ammunition.

(5) The manufacture under the regulation of the military department of the United States of explosive materials for, or their distribution to or storage or possession by, the military or naval services or other agencies of the United States.

(6) Arsenals, navy yards, depots, or other establishments owned by, or operated by or on behalf of, the United States.

(7) The importation and distribution of fireworks classified as Class C explosives and generally known as "common fireworks", and other Class C explosives, as described by U.S. Department of Transportation regulations in 49 CFR Part 173.100(p), (r), (t), (u) and (x).

(8) Gasoline, fertilizers, propellant actuated devices, or propellant actuated industrial tools manufactured, imported, or distributed for their intended purposes.

(9) Industrial and laboratory chemicals which are intended for use as reagents and which are packaged and shipped pursuant to U.S. Department of Transportation regulations, 49 CFR Parts 100 to 177, which do not require explosives hazard warning labels.

(b) *Black powder.* Except for the provisions applicable to persons required to be licensed under subpart D, this part does not apply with respect to commercially manufactured black powder in quantities not to exceed 50 pounds, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers, if the black powder is intended to be used solely for sporting, recreational, or cultural purposes in antique firearms, as defined in 18 U.S.C. 921(a)(16) or antique devices, as exempted from the term "destructive devices" in 18 U.S.C. 921(a)(4), and if the provisions of §§55.105(g) and 55.130 are fully complied with. *Refer to Industry Circular 82-8*

§55.142 Relief from disabilities incurred by indictment, information or conviction.

(a) Any person may make application for relief from the disabilities under the Act incurred by reason of an indictment or information for, or conviction of, a crime punishable by imprisonment for a term exceeding one year.

(b) An application for relief from disabilities is filed with the Director and supported by data that the applicant considers appropriate. In the case of a corporation, or of any person having the power to direct or control the management of the corporation, the supporting data is to include information as to the absence of culpability in the offense for which the corporation, or any such person, was indicted, formally accused or convicted.

(c) The Director may grant relief to an applicant if it is established to the satisfaction of the Director that the circumstances regarding the indictment, information or conviction and the applicant's record and reputation are such that the applicant will not be likely to act in a manner dangerous to public safety, and that the granting of the relief would not be contrary to the public interest.

(d) A person who has been granted relief under this section is relieved of any disabilities imposed by the Act with respect to engaging in the business of importing, manufacturing, or dealing in explosive materials, or the purchase of explosive materials, that were incurred by reason of such indictment, information or conviction.

(e)(1) A licensee or permittee who is under indictment or information for, or convicted of, a crime punishable by imprisonment for a term exceeding one year during the term of a current

license or permit, or while he has pending a license or permit renewal application, shall not be barred from licensed or permit operations for 30 days after the date of indictment or information or 30 days after the date upon which his conviction becomes final. Also, if he files his application for relief under this section within such 30 day period, he may further continue licensed or permit operations while his application is pending. A licensee or permittee who does not file an application within 30 days from the date of his indictment or information, or within 30 days from the date his conviction becomes final, shall not continue licensed or permit operations beyond 30 days from the date of his indictment or information or beyond 30 days from the date his conviction becomes final.

(2) In the event the term of a license or permit of a person expires during the 30 day period following the date of indictment of information or during the 30 day period after the date upon which his conviction becomes final or while his application for relief is pending, he shall file a timely application for renewal of his license or permit in order to continue licensed or permit operations. The license or permit application is to show that the applicant has been indicted or under information for, or convicted of, a crime punishable by imprisonment for a term exceeding one year.

(3) A licensee or permittee shall not continue licensed or permit operations beyond 30 days following the date the Director issues notification that the licensee's or permittee's application for removal of the disabilities resulting from an indictment, information or conviction has been denied.

(4) When a licensee or permittee may no longer continue licensed or permit operations under this section, any application for renewal of license or permit filed by the licensee or permittee while his application for removal of disabilities resulting from an indictment, information or conviction is pending, will be denied by the regional regulatory administrator.

Subpart I — Unlawful Acts, Penalties, Seizures and Forfeitures

§55.161 Engaging in business without a license.

Any person engaging in the business of importing, manufacturing, or dealing in explosive materials without a license issued under the Act, shall be fined not more than $10,000 or imprisoned not more than 10 years, or both.

§55.162 False statement or representation.

Any person who knowingly withholds information or makes any false or fictitious oral or written statement or furnishes or exhibits any false, fictitious, or misrepresented identification, intended or likely to deceive for the purpose of obtaining explosive materials, or a license, permit, exemption, or relief from disability under the Act, shall be fined not more than $10,000 or imprisoned not more than 10 years, or both.

§55.163 False entry in record.

Any licensed importer, licensed manufacturer, licensed manufacturer-limited, licensed dealer, or permittee who knowingly makes any false entry in any record required to be kept under subpart G of this part, shall be fined not more than $10,000 or imprisoned not more than 10 years, or both.

§55.164 Unlawful storage.

Any person who stores any explosive material in a manner not in conformity with this part, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

§55.165 Failure to report theft or loss.

Any person who has knowledge of the theft or loss of any explosive materials from his stock and fails to report the theft or loss within 24 hours of discovery in accordance with §55.30, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

§55.166 Seizure or forfeiture.

Any explosive materials involved or used or intended to be used in any violation of the Act or of this part or in any violation of any criminal law of the United States are subject to seizure and forfeiture, and all provisions of title 26, U.S.C. relating to the seizure, forfeiture, and disposition of firearms, as defined in 26 U.S.C. 5845(a), will, so far as applicable, extend to seizures and forfeitures under this Act.

Subpart K — Storage

§55.201 General.

(a) Section 842(j) of the Act and §55.29 of this part require that the storage of explosive materials by any person must be in accordance with the regulations in this part. The storage standards prescribed by this subpart confer no rights or privileges to store explosive materials in a manner contrary to State or other law.

(b) The Director may authorize alternate construction for explosives storage magazines when it is shown that the alternate magazine construction is substantially equivalent to the standards of safety and security contained in this subpart. Any alternate explosive magazine construction approved by the Director prior to August 9, 1982, will continue as approved unless notified in writing by the Director. Any person intending to use alternate magazine construction shall submit a letter application to the regional regulatory administrator for transmittal to the Director, specifically describing the proposed magazine. Explosive materials may not be stored in alternate magazines before the applicant has been notified that the application has been approved.

(c) A licensee or permittee who intends to make changes in his magazines, or who intends to construct or acquire additional magazines, shall comply with §55.63.

§55.202 Classes of explosive materials.

For purposes of this part, there are three classes of explosive materials. These classes, together with the description of explosive materials comprising each class, are as follows:

(a) *High explosives.* Explosive materials which can be caused to detonate by means of a blasting cap when unconfined. (For example, dynamite.)

(b) *Low explosives.* Explosive materials which can be caused to deflagrate when confined. (For example, black powder; safety fuses; igniters; igniter cords; fuse lighters; and "special fireworks" defined as Class B explosives by U.S. Department of Transportation regulations in 49 CFR Part 173.)

(c) *Blasting agents.* (For example, ammonium nitrate-fuel oil and certain water-gels (see also §55.11).)

§55.203 Types of magazines.

For purposes of this part, there are five types of magazines. These types, together with the classes of explosive materials, as defined in §55.202, which will be stored in them, are as follows:

(a) *Type 1 magazines.* Permanent magazines for the storage of high explosives, subject to the limitations prescribed by §§55.206 and 55.213. Other classes of explosive materials may also be stored in type 1 magazines.

(b) *Type 2 magazines.* Mobile and portable indoor and outdoor magazines for the storage of high explosives, subject to the limitations prescribed by §§55.206, 55.208(b), and 55.213. Other classes of explosive materials may also be stored in type 2 magazines.

(c) *Type 3 magazines.* Portable outdoor magazines for the temporary storage of high explosives while attended (for example, a "day-box"), subject to the limitations prescribed by §§55.206 and 55.213. Other classes of explosives materials may also be stored in type 3 magazines.

(d) *Type 4 magazines.* Magazines for the storage of low explosives, subject to the limitations prescribed by §§55.206(b), 55.210(b), and 55.213. Blasting agents may be stored in type 4 magazines, subject to the limitations prescribed by §§55.206(c), 55.211(b), and 55.213. Detonators that will not mass detonate may also be stored in type 4 magazines, subject to the limitations prescribed by §§55.206(a), 55.210(b), and 55.213.

(e) *Type 5 magazines.* Magazines for the storage of blasting agents, subject to the limitations prescribed by §§55.206(c), 55.211(b), and 55.213.

§55.204 Inspection of magazines.

Any person storing explosive materials shall inspect his magazines at least every seven days. This inspection need not be an inventory, but must be sufficient to determine whether there has been unauthorized entry or attempted entry into the magazines, or unauthorized removal of the contents of the magazines.

§55.205 Movement of explosive materials.

All explosive materials must be kept in locked magazines meeting the standards in this subpart unless they are —

(a) In the process of manufacture;

(b) Being physically handled in the operating process of a licensee or user;

(c) Being used; or

(d) Being transported to a place of storage or use by a licensee or permittee or by a person who

has lawfully acquired explosive materials under §55.106.

§55.206 Location of magazines.

(a) Outdoor magazines in which high explosives are stored must be located no closer to inhabited buildings, passenger railways, public highways, or other magazines in which high explosives are stored, than the minimum distances specified in the table of distances for storage of explosive materials in §55.218.

(b) Outdoor magazines in which low explosives are stored must be located no closer to inhabited buildings, passenger railways, public highways, or other magazines in which explosive materials are stored, than the minimum distances specified in the table of distances for storage of low explosives in §55.219. The distances shown in §55.219 may not be reduced by the presence of barricades.

(c)(1) Outdoor magazines in which blasting agents in quantities of more than 50 pounds are stored must be located no closer to inhabited buildings, passenger railways, or public highways than the minimum distances specified in the table of distances for storage of explosive materials in §55.218.

(2) Ammonium nitrate and magazines in which blasting agents are stored must be located no closer to magazines in which high explosives or other blasting agents are stored than the minimum distances specified in the table of distances for the separation of ammonium nitrate and blasting agents in §55.220. However, the minimum distances for magazines in which explosives and blasting agents are stored from inhabited buildings, etc., may not be less than the distances specified in the table of distances for storage of explosives materials in §55.218.

§55.207 Construction of type 1 magazines.

A type 1 magazine is a permanent structure: a building, an igloo or "Army-type structure", a tunnel, or a dugout. It is to be bullet-resistant, fire-resistant, weather-resistant, theft-resistant, and ventilated.

(a) *Buildings.* All building type magazines are to be constructed of masonry, wood, metal, or a combination of these materials, and have no openings except for entrances and ventilation. The ground around building magazines must slope away for drainage or other adequate drainage provided.

(1) *Masonry wall construction.* Masonry wall construction is to consist of brick, concrete, tile, cement block, or cinder block and be not less than 6 inches in thickness. Hollow masonry units used in construction must have all hollow spaces filled with well-tamped, coarse, dry sand or weak concrete (at least a mixture of one part cement and eight parts of sand with enough water to dampen the mixture while tamping in place). Interior walls are to be constructed of, or covered with, a nonsparking material.

(2) *Fabricated metal wall construction.* Metal wall construction is to consist of sectional sheets of steel or aluminum not less than number 14-gauge, securely fastened to a metal framework. Metal wall construction is either lined inside with brick, solid cement blocks, hardwood not less than four inches thick, or will have at least a six inch sand fill between interior and exterior walls. Interior walls are to be constructed of, or covered with, a nonsparking material.

(3) *Wood frame wall construction.* The exterior of outer wood walls is to be covered with iron or aluminum not less than number 26-gauge. An inner wall of, or covered with nonsparking material will be constructed so as to provide a space of not less than six inches between the outer and inner walls. The space is to be filled with coarse, dry sand or weak concrete.

(4) *Floors.* Floors are to be constructed of, or covered with, a nonsparking material and shall be strong enough to bear the weight of the maximum quantity to be stored. Use of pallets covered with a nonsparking material is considered equivalent to a floor constructed of or covered with a nonsparking material.

(5) *Foundations.* Foundations are to be constructed of brick, concrete, cement block, stone, or wood posts. If piers or posts are used, in lieu of a continuous foundation, the space under the buildings is to be enclosed with metal.

(6) *Roof.* Except for buildings with fabricated metal roofs, the outer roof is to be covered with no less than number 26-gauge iron or aluminum, fastened to at least ⅞ inch sheathing.

(7) *Bullet-resistant ceilings or roofs.* Where it is possible for a bullet to be fired directly through the roof and into the magazine at such an angle that the bullet would strike the explosives within, the magazine is to be protected by one of the following methods:

(i) A sand tray lined with a layer of building paper, plastic, or other nonporous material, and filled with not less than four inches of coarse, dry sand, and located at the tops of inner walls covering the entire ceiling area, except that portion necessary for ventilation.

(ii) A fabricated metal roof constructed of 3/16-inch plate steel lined with four inches of hardwood. (For each additional 1/16 inch of plate steel, the hardwood lining may be decreased one inch.)

(8) *Doors.* All doors are to be constructed of not less than ¼ inch plate steel and lined with at least two inches of hardwood. Hinges and hasps are to be attached to the doors by welding, riveting or bolting (nuts on inside of door). They are to be installed in such a manner that the hinges and hasps cannot be removed when the doors are closed and locked.

(9) *Locks.* Each door is to be equipped with (i) two mortise locks; (ii) two padlocks fastened in separate hasps and staples; (iii) a combination of a mortise lock and a padlock; (iv) a mortise lock that requires two keys to open; or (v) a three-point lock. Padlocks must have at least five tumblers and a casehardened shackle of at least ⅜ inch diameter. Padlocks must be protected with not less than ¼ inch steel hoods constructed so as to prevent sawing or lever action on the locks, hasps, and staples. These requirements do not apply to magazine doors that are adequately secured on the inside by means of a bolt, lock, or bar that cannot be actuated from the outside.

(10) *Ventilation.* Ventilation is to be provided to prevent dampness and heating of stored explosive materials. Ventilation openings must be screened to prevent the entrance of sparks. Ventilation openings in side walls and foundations must be offset or shielded for bullet-resistant purposes. Magazines having foundation and roof ventilators with the air circulating between the side walls and the floors and between the side walls and the ceiling must have a wooden lattice lining or equivalent to prevent the packages of explosive materials from being stacked against the side walls and blocking the air circulation.

(11) *Exposed metal.* No sparking material is to be exposed to contact with the stored explosive materials. All ferrous metal nails in the floor and side walls, which might be exposed to contact with explosive materials, must be blind nailed, countersunk, or covered with a nonsparking lattice work or other nonsparking material.

(b) *Igloos, "Army-type structures", tunnels, and dugouts.* Igloo, "Army-type structure", tunnel, and dugout magazines are to be constructed of reinforced concrete, masonry, metal, or a combination of these materials. They must have an earthmound covering of not less than 24 inches on the top, sides and rear unless the magazine meets the requirements of paragraph (a)(7) of this section. Interior walls and floors must be constructed of, or covered with, a nonsparking material. Magazines of this type are also to be constructed in conformity with the requirements of paragraph (a)(4) and paragraphs (a)(8) through (11) of this section.

§55.208 Construction of type 2 magazines.

A type 2 magazine is a box, trailer, semitrailer, or other mobile facility.

(a) *Outdoor magazines.* (1) *General.* Outdoor magazines are to be bullet-resistant, fire-resistant, weather-resistant, theft-resistant, and ventilated. They are to be supported to prevent direct contact with the ground and, if less than one cubic yard in size, must be securely fastened to a fixed object. The ground around outdoor magazines must slope away for drainage or other adequate drainage provided. When unattended, vehicular magazines must have wheels removed or otherwise effectively immobilized by kingpin locking devices or other methods approved by the Director.

(2) *Exterior construction.* The exterior and doors are to be constructed of not less than ¼-inch steel and lined with at least two inches of hardwood. Magazines with top openings will have lids with water-resistant seals or which overlap the sides by at least one inch when in a closed position.

(3) *Hinges and hasps.* Hinges and hasps are to be attached to doors by welding, riveting, or bolting (nuts on inside of door). Hinges and hasps must be installed so that they cannot be removed when the doors are closed and locked.

(4) *Locks.* Each door is to be equipped with (i) two mortise locks; (ii) two padlocks fastened in separate hasps and staples; (iii) a combination of a mortise lock and a padlock; (iv) a mortise lock that requires two keys to open; or (v) a three-point lock. Padlocks must have at least five tumblers and a case-hardened shackle of at least ⅜-inch diameter. Padlocks must be protected with not less than ¼-inch steel hoods constructed so as to prevent sawing or lever action on the locks, hasps, and staples. These requirements do not apply to magazine doors that are adequately secured on the inside by means of a bolt, lock, or bar that cannot be actuated from the outside.

(b) *Indoor magazines.* (1) *General.* Indoor magazines are to be fire-resistant and theft-resistant. They need not be bullet-resistant and weather-resistant if the buildings in which they are stored provide protection from the weather and from bullet penetration. No indoor magazine is to be located in a residence or dwelling. The indoor storage of high explosives must not exceed a quantity of 50 pounds. More than one indoor magazine may be located in

the same building if the total quantity of explosive materials stored does not exceed 50 pounds. Detonators must be stored in a separate magazine (except as provided in §55.213) and the total quantity of detonators must not exceed 5,000.

(2) *Exterior construction.* Indoor magazines are to be constructed of wood or metal according to one of the following specifications:

(i) Wood indoor magazines are to have sides, bottoms and doors constructed of at least two inches of hardwood and are to be well braced at the corners. They are to be covered with sheet metal of not less than number 26-gauge (.0179 inches). Nails exposed to the interior of magazines must be countersunk.

(ii) Metal indoor magazines are to have sides, bottoms and doors constructed of not less than number 12-gauge (.1046 inches) metal and be lined inside with a nonsparking material. Edges of metal covers must overlap sides at least one inch.

(3) *Hinges and hasps.* Hinges and hasps are to be attached to doors by welding, riveting, or bolting (nuts on inside of door). Hinges and hasps must be installed so that they cannot be removed when the doors are closed and locked.

(4) *Locks.* Each door is to be equipped with (i) two mortise locks; (ii) two padlocks fastened in separate hasps and staples; (iii) a combination of a mortise lock and a padlock; (iv) a mortise lock that requires two keys to open; or (v) a three-point lock. Padlocks must have at least five tumblers and a case-hardened shackle of at least ⅜-inch diameter. Padlocks must be protected with not less than ¼-inch steel hoods constructed so as to prevent sawing or lever action on the locks, hasps, and staples. Indoor magazines located in secure rooms that are locked as provided in this subparagraph may have each door locked with one steel padlock (which need not be protected by a steel hood) having at least five tumblers and a case-hardened shackle of at least ⅜-inch diameter, if the door hinges and lock hasp are securely fastened to the magazine. These requirements do not apply to magazine doors that are adequately secured on the inside by means of a bolt, lock, or bar that cannot be actuated from the outside.

(c) *Detonator boxes.* Magazines for detonators in quantities of 100 or less are to have sides, bottoms and doors constructed of not less than number 12-gauge (.1046 inches) metal and lined with a nonsparking material. Hinges and hasps must be attached so they cannot be removed from the outside. One steel padlock (which need not be protected by a steel hood) having at least five tumblers and a case-hardened shackle of at least ⅜-inch diameter is sufficient for locking purposes.

§55.209 Construction of type 3 magazines.

A type 3 magazine is a "day-box" or other portable magazine. It must be fire-resistant, weather-resistant, and theft-resistant. A type 3 magazine is to be constructed of not less than number 12-gauge (.1046 inches) steel, lined with at least either ½-inch plywood or ½-inch Masonite-type hardboard. Doors must overlap sides by at least one inch. Hinges and hasps are to be attached by welding, riveting or bolting (nuts on inside). One steel padlock (which need not be protected by a steel hood) having at least five tumblers and a case-hardened shackle of at least ⅜-inch diameter is sufficient for locking purposes. Explosive materials are not to be left unattended in type 3 magazines and must be removed to type 1 or 2 magazines for unattened storage.

§55.210 Construction of type 4 magazines.

A type 4 magazine is a building, igloo or "Army-type structure", tunnel, dugout, box, trailer, or a semitrailer or other mobile facility.

(a) *Outdoor magazines.* (1) *General.* Outdoor magazines are to be fire-resistant, weather-resistant, and theft-resistant. The ground around outdoor magazines must slope away for drainage or other adequate drainage be provided. When unattended, vehicular magazines must have wheels removed or otherwise be effectively immobilized by kingpin locking devices or other methods approved by the Director.

(2) *Construction.* Outdoor magazines are to be constructed of masonry, metal-covered wood, fabricated metal, or a combination of these materials. Foundations are to be constructed of brick, concrete, cement block, stone, or metal or wood posts. If piers or posts are used, in lieu of a continuous foundation, the space under the building is to be enclosed with fire-resistant material. The walls and floors are to be constructed of, or covered with, a nonsparking material or lattice work. The doors must be metal or solid wood covered with metal.

(3) *Hinges and hasps.* Hinges and hasps are to be attached to doors by welding, riveting, or bolting (nuts on inside of door). Hinges and hasps must be installed so that they cannot be removed when the doors are closed and locked.

(4) *Locks.* Each door is to be equipped with (i) two mortise locks; (ii) two padlocks fastened in separate hasps and staples; (iii) a combination of a mortise lock and a padlock; (iv) a mortise lock that

requires two keys to open; or (v) a three-point lock. Padlocks must have at least five tumblers and case-hardened shackle of at least ⅜ inch diameter. Padlocks must be protected with not less than ¼ inch steel hoods constructed so as to prevent sawing or lever action on the locks, hasps, and staples. These requirements do not apply to magazine doors that are adequately secured on the inside by means of a bolt, lock, or bar that cannot be actuated from the outside.

(b) *Indoor magazine.* (1) *General.* Indoor magazines are to be fire-resistant and theft-resistant. They need not be weather-resistant if the buildings in which are are stored provide protection from the weather. No indoor magazine is to be located in a residence or dwelling. The indoor storage of low explosives must not exceed a quantity of 50 pounds. More than one indoor magazine may be located in the same building if the total quantity of explosive materials stored does not exceed 50 pounds. Detonators that will not mass detonate must be stored in a separate magazine and the total number of electric detonators must not exceed 5,000.

(2) *Construction.* Indoor magazines are to be constructed of masonry, metal-covered wood, fabricated metal, or a combination of these materials. The walls and floors are to be constructed of, or covered with, a nonsparking material. The doors must be metal or solid wood covered with metal.

(3) *Hinges and hasps.* Hinges and hasps are to be attached to doors by welding, riveting, or bolting (nuts on inside of door). Hinges and hasps must be installed so that they cannot be removed when the doors are closed and locked.

(4) *Locks.* Each door is to be equipped with (i) two mortise locks; (ii) two padlocks fastened in separate hasps and staples; (iii) a combination of a mortise lock and padlock; (iv) a mortise lock that requires two keys to open; or (v) a three-point lock. Padlocks must have at least five tumblers and a case-hardened shackle of at least ⅜-inch diameter. Padlocks must be protected with not less than ¼ inch steel hoods constructed so as to prevent sawing or lever action on the locks, hasps, and staples. Indoor magazines located in secure rooms that are locked as provided in this subparagraph may have each door locked with one steel padlock (which need not be protected by a steel hood) having at least five tumblers and a case-hardened shackle of at least ⅜ inch diameter, if the door hinges and lock hasp are securely fastened to the magazine. These requirements do not apply to magazine doors that are adequately secured on the inside by means of a bolt, lock, or bar that cannot be actuated from the outside.

§55.211 Construction of type 5 magazines.

A type 5 magazine is a building, igloo or "Army-type structure", tunnel, dugout, bin, box, trailer, or a semitrailer or other mobile facility.

(a) *Outdoor magazines.* (1) *General.* Outdoor magazines are to be weather-resistant and theft-resistant. The ground around magazines must slope away for drainage or other adequate drainage be provided. When unattended, vehicular magazines must have wheels removed or otherwise be effectively immobilized by kingpin locking devices or other methods approved by the Director.

(2) *Construction.* The doors are to be constructed of solid wood or metal.

(3) *Hinges and hasps.* Hinges and hasps are to be attached to doors by welding, riveting, or bolting (nuts on inside of door). Hinges and hasps must be installed so that they cannot be removed when the doors are closed and locked.

(4) *Locks.* Each door is to be equipped with (i) two mortise locks; (ii) two padlocks fastened in separate hasps and staples; (iii) a combination of a mortise lock and a padlock; (iv) a mortise lock that requires two keys to open; or (v) a three-point lock. Padlocks must have at least five tumblers and a case-hardened shackle of at least ⅜ inch diameter. Padlocks must be protected with not less than ¼ inch steel hoods constructed so as to prevent sawing or lever action on the locks, hasps, and staples. Trailers, semitrailers, and similar vehicular magazines may, for each door, be locked with one steel padlock (which need not be protected by a steel hood) having at least five tumblers and a case-hardened shackle of at least ⅜ inch diameter, if the door hinges and lock hasp are securely fastened to the magazine and to the door frame. These requirements do not apply to magazine doors that are adequately secured on the inside by means of a bolt, lock, or bar that cannot be actuated from the outside.

(b) *Indoor magazines.* (1) *General.* Indoor magazines are to be theft-resistant. They need not be weather-resistant if the buildings in which they are stored provide protection from the weather. No indoor magazine is to be located in a residence or dwelling. Indoor magazines containing quantities of blasting agents in excess of 50 pounds are subject to the requirements of §55.206 of this subpart.

(2) *Construction.* The doors are to be constructed of wood or metal.

(3) *Hinges and hasps.* Hinges and hasps are to be attached to doors by welding, riveting, or bolting (nuts on inside). Hinges and hasps must be installed so that they cannot be removed when the doors are closed and locked.

(4) *Locks.* Each door is to be equipped with (i) two mortise locks; (ii) two padlocks fastened in separate hasps and staples; (iii) a combination of a mortise lock and a padlock; (iv) a mortise lock that requires two keys to open; or (v) a three-point lock. Padlocks must have at least five tumblers and a case-hardened shackle of at least ⅜ inch diameter. Padlocks must be protected with not less than ¼ inch steel hoods constructed so as to prevent sawing or lever action on the locks, hasps, and staples. Indoor magazines located in secure rooms that are locked as provided in this subparagraph may have each door locked with one steel padlock (which need not be protected by a steel hood) having at least five tumblers and a case-hardened shackle of at least ⅜ inch diameter, if the door hinges and lock hasps are securely fastened to the magazine and to the door frame. These requirements do not apply to magazine doors that are adequately secured on the inside by means of a bolt, lock, or bar that cannot be actuated from the outside.

§55.212 Smoking and open flames.

Smoking, matches, open flames, and spark producing devices are not permitted —

(a) In any magazine;

(b) Within 50 feet of any outdoor magazine; or

(c) Within any room containing an indoor magazine.

§55.213 Quantity and storage restrictions.

(a) Explosive materials in excess of 300,000 pounds or detonators in excess of 20 million are not to be stored in one magazine unless approved by the Director.

(b) Detonators are not to be stored in the same magazine with other explosive materials, except under the following circumstances:

(1) In a type 4 magazine, detonators that will not mass detonate may be stored with electric squibs, safety fuse, igniters, and igniter cord.

(2) In a type 1 or type 2 magazine, detonators may be stored with delay devices and any of the items listed in paragraph (b)(1) of this section.

§55.214 Storage within types 1, 2, 3, and 4 magazines.

(a) Explosive materials within a magazine are not to be placed directly against interior walls and must be stored so as not to interfere with ventilation. To prevent contact of stored explosive materials with walls, a nonsparking lattice work or other nonsparking material may be used.

(b) Containers of explosive materials are to be stored so that marks are visible. Stocks of explosive materials are to be stored so they can be easily counted and checked upon inspection.

(c) Except with respect to fiberboard or other nonmetal containers, containers of explosive materials are not to be unpacked or repacked inside a magazine or within 50 feet of a magazine, and must not be unpacked or repacked close to other explosive materials. Containers of explosive materials must be closed while being stored.

(d) Tools used for opening or closing containers of explosive materials are to be of nonsparking materials, except that metal slitters may be used for opening fiberboard containers. A wood wedge and a fiber, rubber, or wooden mallet are to be used for opening or closing wood containers of explosive materials. Metal tools other than nonsparking transfer conveyors are not to be stored in any magazine containing high explosives.

§55.215 Housekeeping.

Magazines are to be kept clean, dry, and free of grit, paper, empty packages and containers, and rubbish. Floors are to be regularly swept. Brooms and other utensils used in the cleaning and maintenance of magazines must have no spark-producing metal parts, and may be kept in magazines. Floors stained by leakage from explosive materials are to be cleaned according to instructions of the explosives manufacturer. When any explosive material has deteriorated it is to be destroyed in accordance with the advice or instructions of the manufacturer. The area surrounding magazines is to be kept clear of rubbish, brush, dry grass, or trees (except live trees more than 10 feet tall), for not less than 25 feet in all directions. Volatile materials are to be kept a distance of not less than 50 feet from outdoor magazines. Living foliage which is used to stabilize the earthen covering of a magazine need not be removed.

§55.216 Repair of magazines.

Before repairing the interior of magazines, all explosive materials are to be removed and the interior cleaned. Before repairing the exterior of magazines, all explosive materials must be removed if there exists any possibility that repairs may produce sparks or flame. Explosive materials removed from magazines under repair must be (a)

placed in other magazines appropriate for the storage of those explosive materials under this subpart, or (b) placed a safe distance from the magazines under repair where they are to be properly guarded and protected until the repairs have been completed.

§55.217 Lighting.

(a) Battery-activated safety lights or battery-activated safety lanterns may be used in explosives storage magazines.

(b) Electric lighting used in any explosives storage magazine must meet the standards prescribed by the "National Electrical Code," (National Fire Protection Association, NFPA 70-81), for the conditions present in the magazine at any time. All electrical switches are to be located outside of the magazine and also meet the standards prescribed by the National Electrical Code.

(c) Copies of invoices, work orders or similar documents which indicate the lighting complies with the National Electrical Code must be available for inspection by ATF officers.

§55.218 Table of distances for storage of explosive materials.

Quantity of explosives		Distances in feet							
Pounds		Inhabited buildings		Public highways class A to D		Passenger railways — public highways with traffic volume of more than 3,000 vehicles per day		Separation of magazines	
over	not over	Barricaded	Unbarricaded	Barricaded	Unbarricaded	Barricaded	Unbarricaded	Barricaded	Unbarricaded
2	5	70	140	30	60	51	102	6	12
5	10	90	180	35	70	64	128	8	16
10	20	110	220	45	90	81	162	10	20
20	30	125	250	50	100	93	186	11	22
30	40	140	280	55	110	103	206	12	24
40	50	150	300	60	120	110	220	14	28
50	75	170	340	70	140	12X	254	15	30
75	100	190	380	75	150	139	278	16	32
100	125	200	400	80	160	150	300	18	36
125	150	215	430	85	170	159	318	19	38
150	200	235	470	95	190	175	350	21	42
200	250	255	510	105	210	189	378	23	46
250	300	270	540	110	220	201	402	24	48
300	400	295	590	120	240	221	442	27	54
400	500	320	640	130	260	238	476	29	58
500	600	340	680	135	270	253	306	31	62
600	700	355	710	145	290	266	532	32	64
700	800	375	750	150	300	278	556	33	66
800	900	390	780	155	310	289	578	35	70
900	1,000	400	800	160	320	300	600	36	72
1,000	1,200	425	850	165	330	318	636	39	78
1,200	1,400	450	900	170	340	336	672	41	82
1,400	1,600	470	940	175	350	351	702	43	86
1,600	1,800	490	980	180	360	366	732	44	88
1,800	2,000	505	1,010	185	370	378	756	45	90
2,000	2,500	545	1,090	190	380	408	816	49	98
2,500	3,000	580	1,160	195	390	432	864	52	104
3,000	4,000	635	1,270	210	420	474	948	58	116
4,000	5,000	685	1,370	225	450	513	1,026	61	122
5,000	6,000	730	1,460	235	470	546	1,092	65	130
6,000	7,000	770	1,540	245	490	573	1,146	68	136
7,000	8,000	800	1,600	250	500	600	1,200	72	144
8,000	9,000	835	1,670	255	510	624	1,248	75	150
9,000	10,000	865	1,730	260	520	645	1,290	78	156
10,000	12,000	875	1,750	270	540	687	1,374	82	164
12,000	14,000	885	1,770	275	550	723	1,446	87	174
14,000	16,000	900	1,800	280	560	756	1,512	90	180
16,000	18,000	940	1,880	285	570	786	1,572	94	188
18,000	20,000	975	1,950	290	580	813	1,626	98	196
20,000	25,000	1,055	2,000	315	630	876	1,752	105	210
25,000	30,000	1,130	2,000	340	680	933	1,866	112	224
30,000	35,000	1,205	2,000	360	720	981	1,962	119	238
35,000	40,000	1,275	2,000	380	760	1,026	2,000	124	248
40,000	45,000	1,340	2,000	400	800	1,068	2,000	129	258
45,000	50,000	1,400	2,000	420	840	1,104	2,000	135	270
50,000	55,000	1,460	2,000	440	880	1,140	2,000	140	280
55,000	60,000	1,515	2,000	455	910	1,173	2,000	145	290
60,000	65,000	1,565	2,000	470	940	1,206	2,000	150	300
65,000	70,000	1,610	2,000	485	970	1,236	2,000	155	310
70,000	75,000	1,655	2,000	500	1,000	1,263	2,000	160	320
75,000	80,000	1,695	2,000	510	1,020	1,293	2,000	165	330
80,000	85,000	1,730	2,000	520	1,040	1,317	2,000	170	340
85,000	90,000	1,760	2,000	530	1,060	1,344	2,000	175	350
90,000	95,000	1,790	2,000	540	1,080	1,368	2,000	180	360
95,000	100,000	1,815	2,000	545	1,090	1,392	2,000	185	370
100,000	110,000	1,835	2,000	550	1,100	1,437	2,000	195	390
110,000	120,000	1,855	2,000	555	1,110	1,479	2,000	205	410
120,000	130,000	1,875	2,000	560	1,120	1,521	2,000	215	430
130,000	140,000	1,890	2,000	565	1,130	1,557	2,000	225	450
140,000	150,000	1,900	2,000	570	1,140	1,593	2,000	235	470
150,000	160,000	1,935	2,000	580	1,160	1,629	2,000	245	490
160,000	170,000	1,965	2,000	590	1,180	1,662	2,000	255	510
170,000	180,000	1,990	2,000	600	1,200	1,695	2,000	265	530
180,000	190,000	2,010	2,010	605	1,210	1,725	2,000	275	550
190,000	200,000	2,030	2,030	610	1,220	1,755	2,000	285	570
200,000	210,000	2,055	2,055	620	1,240	1,782	2,000	295	590
210,000	230,000	2,100	2,100	635	1,270	1,836	2,000	315	630
230,000	250,000	2,155	2,155	650	1,300	1,890	2,000	335	670
250,000	275,000	2,215	2,215	670	1,340	1,950	2,000	360	720
275,000	300,000	2,275	2,275	690	1,380	2,000	2,000	385	770

Table: American Table of Distances for Storage of Explosives (December 1910), as revised and approved by The Institute of Makers of Explosives — November 5, 1971

Notes to the Table of Distances for Storage of Explosives

(1) Terms found in the table of distances for storage of explosive materials are defined in §55.11.

(2) When two or more storage magazines are located on the same property, each magazine must comply with the minimum distances specified from inhabited buildings, railways, and highways, and, in addition, they should be separated from each other by not less than the distances shown for "Separation of Magazines," except that the quantity of explosives contained in cap magazines shall govern in regard to the spacing of said cap magazines from magazines containing other explosives. If any two or more magazines are separated from each other by less than the specified "Separation of Magazines" distances, then such two or more magazines, as a group, must be considered as one magazine, and the total quantity of explosives stored in such group must be treated as if stored in a single magazine located on the site of any magazine of the group, and must comply with the minimum of distances specified from other magazines, inhabited buildings, railways, and highways.

(3) All types of blasting caps in strengths through No. 8 cap should be rated at 1½ lbs. of explosives per 1,000 caps. For strengths higher than No. 8 cap, consult the manufacturer.

(4) For quantity and distance purposes, detonating cord of 50 or 60 grains per foot should be calculated as equivalent to 9 lbs. of high explosives per 1,000 feet. Heavier or lighter core loads should be rated proportionately.

§55.219 Table of distances for storage of low explosives

Pounds		From inhabited building distance (feet)	From public railroad and highway distance feet	From above ground magazine (feet)
Over	Not over			
0	1,000	75	75	50
1,000	5,000	115	115	75
5,000	10,000	150	150	100
10,000	20,000	190	190	125
20,000	30,000	215	215	145
30,000	40,000	235	235	155
40,000	50,000	250	250	165
50,000	60,000	260	260	175
60,000	70,000	270	270	185
70,000	80,000	280	280	190
80,000	90,000	295	295	195
90,000	100,000	300	300	200
100,000	200,000	375	375	250
200,000	300,000	450	450	300

Table: Department of Defense Ammunition and Explosives Standards, Table 5 — 4.1 extract; 4145.27 M, March 1969.

§55.220 Table of separation distances of ammonium nitrate and blasting agents from explosives or blasting agents. (1)(6)

Donor weight (pounds)		Minimum separation distance of acceptor from donor when barricaded (ft.)		Minimum thickness of artificial barricades (in.)
Over	Not over	Ammonium nitrate	Blasting agent	
	100	3	11	12
100	300	4	14	12
300	600	5	18	12
600	1,000	6	22	12
1,000	1,600	7	25	12
1,600	2,000	8	29	12
2,000	3,000	9	32	15
3,000	4,000	10	36	15
4,00	6,000	11	40	15
6,000	8,000	12	43	20
8,000	10,000	13	47	20
10,000	12,000	14	50	20
12,000	16,000	15	54	25
16,000	20,000	16	58	25
20,000	25,000	18	65	25
25,000	30,000	19	68	30
30,000	35,000	20	72	30
35,000	40,000	21	76	30
40,000	45,000	22	79	35
45,000	50,000	23	83	35
50,000	55,000	24	86	35
55,000	60,000	25	90	35
60,000	70,000	26	94	40
70,000	80,000	28	101	40
80,000	90,000	30	108	40
90,000	100,000	32	115	40
100,000	120,000	34	122	50
120,000	140,000	37	133	50
140,000	160,000	40	144	50
160,000	180,000	44	158	50
180,000	200,000	48	173	50
200,000	220,000	52	187	60
220,000	250,000	56	202	60
250,000	275,000	60	216	60
275,000	300,000	64	230	60

Table: National Fire Protection Association (NFPA) Official Standard No. 492, 1968.

Notes of Table of Separation Distances of Ammonium Nitrate and Blasting Agents From Explosives or Blasting Agents

(1) This table specifies separation distances to prevent explosion of ammonium nitrate and ammonium nitrate-based blasting agents by propagation from nearby stores of high explosives or blasting agents referred to in the table as the "donor." Ammonium nitrate, by itself, is not considered to be a donor when applying this table. Ammonium

nitrate, ammonium nitrate-fuel oil or combinations thereof are acceptors. If stores of ammonium nitrate are located within the sympathetic detonation distance of explosives or blasting agents, one-half the mass of the ammonium nitrate is to be included in the mass of the donor.

(2) When the ammonium nitrate and/or blasting agent is not barricaded, the distances shown in the table must be multiplied by six. These distances allow for the possibility of high velocity metal fragments from mixers, hoppers, truck bodies, sheet metal structures, metal containers, and the like which may enclose the "donor." Where explosives storage is in bullet-resistant magazines or where the storage is protected by a bullet-resistant wall, distances and barricade thicknesses in excess of those prescribed in the table in §55.218 are not required.

(3) These distances apply to ammonium nitrate that passes the insensitivity test prescribed in the definition of ammonium nitrate fertilizer issued by the Fertilizer Institute.[1] Ammonium nitrate failing to pass the test must be stored at separation distances in accordance with the table in §55.218.

(4) These distances apply to blasting agents which pass the insensitivity test prescribed in regulations of the U.S. Department of Transportation (49 CFR Part 173).

(5) Earth or sand dikes, or enclosures filled with the prescribed minimum thickness of earth or sand are acceptable artificial barricades. Natural barricades, such as hills or timber of sufficient density that the surrounding exposures which require protection cannot be seen from the "donor" when the trees are bare of leaves, are also acceptable.

(6) For determining the distances to be maintained from inhabited buildings, passenger railways, and public highways, use the table in §55.218.

[1] Definition and Test Procedures for Ammonium Nitrate Fertilizer, Fertilizer Institute 1015-18th St. N.W. Washington, D.C. 20036.

Federal Explosives Storage Requirements

Types of Storage Facilities

Storage Type	Classes of Explosive Materials Which May Be Stored Therein
Type 1 (permanent)	High Explosives Low Explosives Blasting Agents
Type 2 (portable)	High Explosives Low Explosives Blasting Agents
Type 3 ("day-box" for temporary storage)	High explosives Low Explosives Blasting Agents
Type 4	Low Explosives Blasting Agents *Electric Blasting Caps
Type 5	Blasting Agents

*As a result of tests with electric blasting caps, it has been determined that these blasting caps are not subject to sympathetic detonation. Therefore, a Type 4 storage facility meets the necessary requirements for storage of electric blasting caps.

Note: 1. Blasting caps shall not be stored with other explosive materials in the same storage facility.

Housekeeping and Construction Requirements Common to All Types of Storage Facilities

Item	Requirements
Hinges and Hasps	Shall be attached to doors by either Welding, OR Riveting, OR Bolting (nuts on inside of door).
Locks	Each door shall be equipped with either 2 mortise locks, OR 2 padlocks fastened in separate hasps and staples, OR A combination of a mortise lock and a padlock, OR Mortise lock requiring 2 keys to open, OR Three-point lock. Locks shall be five-tumbler. Padlocks shall be protected with ¼" steel caps constructed to prevent sawing or lever action on locks or hasps. Note: Outdoor-mobile storage facilities with one steel, case-hardened, five-tumbler padlock, having at least a ⅜" shackle diameter, have been determined by the Director to meet necessary requirements.
Lighting	Electric lighting used in any magazine must meet National Electrical Code standards for conditions present. All electric switches must be located outside the magazine and comply with the National Electric Code. Battery activated safety lighting may be used in all explosives magazines.
Housekeeping	Storage facilities shall be kept clean, dry, and free of grit, paper, empty packages and containers, and rubbish. Explosive materials shall not be placed directly against interior walls of storage facility. Brooms and other cleaning utensils shall have no spark-producing metal parts. Only tools made of nonsparking materials shall be used in Types 1, 2, 3, and 4 magazines. (Metal slitters may be used for opening fiberboard containers. Metal tools other than nonsparking transfer conveyors shall not be stored in any magazine containing high explosives.) Area surrounding storage facilities shall be kept clear of rubbish, brush, dry grass, or trees for not less than 25 feet in all directions. Any other combustible materials shall be kept a distance of not less than 50 feet from outdoor storage facilities.

Type 1 Storage

A type 1 storage facility shall be a permanent structure: a building, an igloo or Army-type structure, a tunnel, or a dugout; and shall be bullet-resistant, weather-resistant, theft-resistant, and well-ventilated.

Item	Requirements
Masonry Wall	Shall be constructed of either Brick, not less than 6" thick, OR Concrete, not less than 6" thick, OR Tile, not less than 6" thick, OR *Cement block, not les than 6" thick, OR *Cinder block, not less than 6" thick. *Hollow masonry units shall have all hollow spaces filed with well-tamped coarse dry sand or weak concrete.
Metal Wall	Sectional sheets of one of the following shall be securely fastened to a metal framework: Steel, not less than 14 gauge, OR Aluminum, not less than 14 gauge. Shall be lined with either Brick, OR Solid cement blocks, OR Hardwood, not less than 4" thick, OR Shall have at least 6" sand fill between inner and outer walls.
Wood Wall	Exterior shall be covered with either Iron, not less than 26 gauge, OR Aluminum, not less than 26 gauge. Inner wall shall be constructed to provide not less than 6" between outer and inner walls, space filled with either Coarse dry sand, OR Weak concrete.
Foundations	Shall be constructed of either Brick, OR Concrete, OR Cement block, OR Stone, OR Wood posts (If piers or posts are used, space under building shall be enclosed with metal).
Floors	Shall be constructed of nonsparking material. Shall be strong enough to bear weight of maximum quantity to be stored.

Item	Requirements
Roof	Outer roof (except fabricated metal roofs) shall be covered with either 26-gauge iron, fastened to ⅞" sheathing, OR 26-gauge aluminum fastened to ⅞" sheathing. Where possible for a bullet to be fired directly through roof and into storage facility, magazine shall be protected by either A sand tray, filled with not less than 4" of coarse dry sand, covering the entire ceiling area; except that necessary for ventilation, OR Fabricated metal roof construction of 3/16" plate steel, lined with 4" hardwood (for each additional 1/16" of plate steel, hardwood may be decreased 1").
Doors	Shall be constructed of 1/4" steel. Shall be lined with 2" of hardwood.
Hinges, Hasps, and Locks	See construction requirements common to all types of facilities.
Interior	Shall be constructed of or covered with a nonsparking material. No sparking metal construction shall be exposed below top of walls in interior. All nails shall be blind-nailed or countersunk.
Ventilation	2" air space shall be left around ceiling and perimeter of floors, except at doorways. Foundation ventilators shall be not less than 4"x6". Vents in foundation, roof, or gables shall be screened and offset.
Ground	Ground around storage facility shall slope away for drainage.
Igloos, Army-Type Structures, Tunnels and Dugouts	Shall be constructed of reinforced concrete, masonry, metal, or a combination of these materials. Shall have an earthmound covering of not less than 24" on the top, sides and rear. Interior walls and floors shall be covered with a nonsparking material. Floor, door, lock, ventilation, exposed metal, and lighting requirements are as stated above.
Lighting	See construction requirements common to all types of facilities.
Housekeeping	See housekeeping requirements common to all types of facilities.

Type 2 Storage

A type 2 storage facility shall be a box, a trailer, a semitrailer, or other mobile facility. It shall be bullet-resistant, fire-resistant, weather-resistant, theft-resistant and well ventilated.

Item	Requirements
Hinges, Hasps, and Locks	See construction requirements common to all types of storage facilities.
Lighting	See construction requirements common to all types of storage facilities.
Housekeeping	See housekeeping requirements common to all types of storage facilities.
Restrictions on Type 2 Outdoor Storage Facilities	
Size	Shall be at least 1 cubic yard in size, or securely fastened to fixed object
Ground	Outdoor storage facilities shall be supported in such a manner so as to prevent direct contact with the ground. Ground around storage facility shall slope away for drainage.
Construction	Sides, bottoms, tops, and covers or doors shall be constructed of ¼" steel and lined with 2" of hardwood.
Unattended Storage	Unattended vehicular storage facilities shall have wheels removed or shall be immobilized by kingpin locking devices.
Restrictions On Type 2 Indoor Storage Facilities	
Location	No indoor storage facility for storage of high explosives shall be located in a residence or dwelling. More than one magazine may be located in same building. No more than a total of 50 pounds may be stored. Detonators must be stored in a separate magazine.
Item	**Requirements**
Quantity Restrictions	No indoor storage facility shall contain a quantity of high explosives in excess of 50 pounds or more than 5,000 blasting caps.
Construction	Shall be of either *Wood* (Shall have sides, bottoms, and covers or doors constructed of 2" hardwood and shall be well braced at corners. They shall be covered with sheet metal (not less than 26 gauge). Exposed nails shall be countersunk), OR *Metal* (Shall have sides, bottoms, and covers or doors constructed of 12-gauge metal and shall be lined inside with a nonsparking material. Edges of metal shall overlap sides at least 1").
Detonator Boxes	
	Storage facilities for detonators in quantities of 100 or less shall have sides, bottoms, and covers constructed of 12-gauge metal, with hinges and hasps attached by welding. One five-tumbler lock shall be sufficient for locking purposes.

Type 3 Storage

A type 3 storage facility shall be a "day-box" or other portable facility. It shall be constructed in the same manner prescribed for type 2 outdoor storage facilities in 55.208(a), except that it may be less than 1 cubic yard in size, and shall be bullet-resistant, fire-resistant, weather-resistant, theft-resistant, and well ventilated.

Item	Requirements
Construction	Doors or covers, bottoms, and tops shall be constructed of ¼" steel and lined with 2" of hardwood. Edges of metal covers shall overlap sides at least 1".
Hinges, Hasps, and Locks	See housekeeping and construction requirements common to all types of storage facilities.
Ground	Ground around storage facility shall slope away for drainage.
Unattended Storage	No explosive materials shall be left in storage facility if unattended. Explosive materials must be removed to types 1 or 2 storage facilities for unattended storage.
Lighting	See common requirements
Housekeeping	See common requirements

Type 4 Storage

A type 4 storage facility may be a building, an igloo or Army-type structure, a tunnel, a dugout, a box, a trailer, or a semitrailer or other mobile facility; and shall be fire-resistant, weather-resistant, and theft-resistant.

Item	Requirements
Construction	Shall be of either Masonry, OR Metal-covered wood, OR Fabricated metal, OR Combinations of these materials.
Door or Covers	Shall be constructed of either Metal, OR Solid wood covered with metal.
Foundations	Shall be constructed of either Brick, OR Cement block, OR Concrete, OR Stone, OR Wood posts (If piers or posts are used, space under buildings shall be enclosed with metal).
Interior	Shall be lined with nonsparking material. No sparking metal construction shall be exposed below top of walls in interior. All nails shall be blind-nailed or countersunk.
Hinges, Hasps. and Locks	See common requirements
Lighting	See common requirements
Housekeeping	See common requirements
Restrictions On Type 4 Outdoor Storage Facilities	
Ground	Ground around storage facility shall slope away for drainage.
Unattended Storage	Unattended vehicular storage facilities shall have wheels removed or shall be immobilized by kingpin locking devices.
Restrictions On Type 4 Indoor Storage Facilities	
Location	No indoor facility for the storage of low explosives shall be located in a residence or dwelling.
Quantity Restrictions	No indoor facility shall contain a quantity of low explosives in excess of 50 pounds.

Type 5 Storage

A Type 5 storage facility may be a building, an igloo or Army-type structure, a tunnel, a dugout, a bin, a box, a trailer, or a semitrailer or other mobile facility; and shall be theft-resistant.

Item	Requirements
Doors or Covers	Shall be constructed of either Solid wood, OR Metal.
Hinges, Hasps, and Locks	See construction requirements common to all types of storage facilities.
Housekeeping	See common requirements
Restrictions On Type 5 Outdoor Storage Facilities	
Ground	Ground around storage facility shall slope away for drainage.
Unattended Storage	Unattended vehicular storage facilities shall have wheels removed or shall be immobilized by kingpin locking devices.
Restrictions On Type 5 Indoor Storage Facilities	
Location	No indoor storage facility for storing of blasting agents shall be located in a residence or dwelling.

Questions and Answers

18 U.S.C. Chapter 40 and 27 CFR Part 55

Introduction

The following Questions and Answers are intended to aid you in gaining a better understanding of 18 U.S.C. Chapter 40 — Importation, Manufacture, Distribution and Storage of Explosive Materials, and the implementing regulations issued thereunder (27 CFR Part 55 — Commerce in Explosives). Although the listing is by no means all-inclusive, it does contain a selection of those questions that ATF receives most frequently concerning explosives.

References following some answers refer to the regulations and publications with which they are concerned. Several questions concern black powder transactions. See the following editor's note and the more complete explanation to be found elsewhere in this publication. An asterisk, which is keyed to the editor's note, refers the reader to the special article concerning the black powder exemption and appropriate portions of regulations. A Table of Contents, which reflects the broad categories into which questions have been grouped, and a Subject Index have been included for your convenience.

These questions and answers apply only to Federal law and regulations. Numerous States, counties and municipalities have enacted their own requirements relating to explosives. **Compliance with Federal law and regulations in no way exempts persons from compliance with State or local requirements.**

Editor's Note

Under Public Law 93-639 and implementing regulations, transactions involving commercially manufactured black powder, in quantities of 50 pounds or less, for sporting, recreational or cultural purposes in antique firearms or antique devices have been largely deregulated. For further information, see the special article headed "Black Powder Transactions." Regulation changes also affect licensing, recordkeeping and storage.

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General Questions

1. Who is affected by the Federal explosives law?

The law affects all persons who import, manufacture, deal in, purchase, use or store explosive materials. It also affects those who ship, transport, or receive explosive materials in interstate or foreign commerce. See question 20 for state requirements.

2. To whom is the distribution by licensees of explosive materials prohibited?

Explosive materials may not be distributed to a person: (1) who is under 21 years of age; (2) who is under indictment for or who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year; (3) who is a fugitive from justice; (4) who is an unlawful user of marijuana or any depressant or stimulant drug or addicted to a narcotic drug; (5) who has been adjudicated as a mental defective or who has been committed to a mental institution. [55.26]

3. Does the law prevent some persons from dealing in explosives?

Yes. The same classes of persons listed in the answer to Question #2 may not obtain a Feder-

al explosives license. In addition, prospective licensees must meet the other requirements set forth in 55.49. [See question 19]

4. How does the law affect your dispositions to persons who do not have a license or permit?

A person who has not acquired a permit from the Federal government may, if he is not barred as discussed in questions 2 and 3, purchase explosives only in the State in which he resides. There is one exception: interstate purchases without permits are allowed if the purchaser's State of residence has passed specific legislation allowing its citizens to transport into or receive in that State explosive materials purchased in a bordering State. All persons, however, who purchase explosives, either intrastate or interstate, must have storage facilities which meet the requirements of law, if the explosives are to be stored.[55.105]

5. What States allow their citizens to purchase explosive materials in bordering States?

Washington, Wyoming, Delaware, Vermont and Kentucky. Pennsylvania allows such purchases for black powder only.

6. When a person purchases explosive materials, does he have to sign anything?

Yes. Form 5400.4 will be executed by the buyer. This form is used in the purchase of high explosives, low explosives, and blasting agents. A licensee or permittee who purchases explosive materials is not required to complete Form 4710.

7. Does Federal law and regulations provide for penalties for purchasers who give false information to a licensee at the time of purchase?

Yes. The penalty for providing false information or misrepresented identification is a maximum of ten years imprisonment and/or $10,000 fine. [55.162]

8. When a person purchases explosive materials, is the Government notified?

No. The executed Form 5400.4 remains on dealer premises. [55.126]

9. Are thefts of explosives covered by the law?

Yes. Any person discovering a theft or loss of explosive materials from his stock must report it to ATF, and to the appropriate local authorities within 24 hours. Also, it is unlawful to receive, conceal, transport, ship, store, barter, sell or dispose of any explosive materials knowing or having reasonable cause to believe that such explosive materials were stolen. [55.30]

10. Will anyone investigate accidents involving explosives?

ATF is authorized to inspect the site of any accident or fire where there is reason to believe that explosive materials were involved. Other Federal agencies, or State or local agencies, might also investigate such incidents, depending on the circumstances. [55.31]

11. Is small arms ammunition affected by this law?

No. The law specifically exempts small arms ammunition and components thereof; therefore, the primers and smokeless propellants used in small arms ammunition are exempt from the provisions of the law. [55.141]

12. Are binary explosives subject to regulatory controls of the law?

Until the compounds are mixed they are not classified as explosives and, therefore, are not subject to control. However, once mixed, binary explosives are subject to all applicable Federal requirements. A person who regularly and continually combines compounds of binary materials to manufacture an explosive is engaged in the business of manufacturing explosives and shall be required to be licensed as a manufacturer. [ATF Ruling 75-31]

13. Is the rocket propellant in model rocket kits considered to be an explosive?

No. [55.141]

14. Does ATF have any regulations governing the actual transportation of explosives?

No. This authority is vested in the Department of Transportation. [55.141]

15. What is the Explosives List?

The Explosives List is a comprehensive, but not all-inclusive, listing of the more common explosive materials that have been determined to be within the coverage of the regulation. The list is published annually by the Director, ATF. [55.23]

Licenses & Permits

16. I want to buy a small quantity of dynamite from my local dealer to use on my property. Do I need a Federal user's permit?

No, provided it is purchased in your State of residence and not transported across State lines. A Federal user's permit is required when a nonlicensee acquires or transports explosives in interstate or foreign commerce. It allows transactions for personal use only. [See question 17.]

Federal explosives storage requirements apply to nonpermittees and nonlicensees as well as to permittees and licensees. Unless the explosives are being used, appropriate storage will be required as set forth in Federal requlations. [55.201]

17. What activities are covered by licenses and permits?

Licenses are issued to explosives manufacturers, importers, and dealers. Any individual or business entity intending to engage in any of these activities must first obtain a license. A permit allows acquisition and transportation of explosives in interstate or foreign commerce. [55.41]

Separate licenses are needed at each premises where the activity licensed is conducted. However, only one permit is needed by a permittee who uses explosives in more than one location. [See questions 29 and 31]

18. May black powder be sold without a license?

No. Anyone who sells black powder, regardless of the quantity, must be licensed as an explosives dealer. [55.41]

19. How would a person qualify for a Federal license or permit?

A person must be 21 years of age or over; must not be within a prohibited category (see question 2); must not have willfully violated any of the provisions of the Act or the regulations; must have premises in the State from which he intends to conduct business; must have a place of storage for explosive materials which meets the standards of the Federal regulations regarding public safety and security against theft; and must be familiar with all published State laws and local ordinances relating to explosive materials for the location in which he intends to do business [55.49(a) & (b)]

A Form 5400.13 must be filed to obtain a license, and a Form 5400.16 must be filed to obtain a permit. [55.45]

20. Does a Federal license or permit exempt the holder from State or local requirements?

No. A license or permit confers no right or privilege to conduct business or operations, including storage, contrary to State or other law. [55.62]

21. For what period of time are permits and licenses valid?

An original license or permit is issued for a period of one year. A renewal license or permit is issued for a period of three years. However, a manufacturer-limited license is issued for a period of 30 days and a user-limited permit is valid only for a single purchase transaction. [55.51]

22. Can a license or permit be revoked?

Yes. The Regional Regulatory Administrator may revoke any license or permit if the holder has violated any provisions of the law or regulations. [55.71, et seq.]

23. What are the fees for licenses and permits?

The license fees are:

1. — Manufacturer — $50
2. — Manufacturer-limited (nonrenewable) — $5
3. — Importer — $50
4. — Dealer — $20
5. — The permit fees are: User — $20; User-limited (nonrenewable) — $2

The renewal fee for licenses and permits is one-half the original fee; good for a 3-year period. [55.42 & .43]

24. Will the Government investigate an application for license or permit?

ATF may investigate any application, and inspect all places of storage before issuing a license or permit. [55.49]

25. What may a licensed dealer do?

A licensed dealer may engage in the business of distributing explosives materials at wholesale or retail. [55.11 (Definition of dealers)]

26. What may a licensed importer do?

A licensed importer may engage in the business of importing or bringing explosive materials into the United States for sale or distribution. [55.11 (Definition of importer)]. It is not necessary for a licensed importer to also obtain a dealer's license in order to engage in business on his licensed premises as a dealer in explosive materials. [55.41]

27. How may I import Explosives?

Any licensed importer or permittee may import explosives by providing the Customs Service

a copy of the license or permit [55.41; .108]

Note, however, that in the case of propellant powder or other components of small arms ammunition, an approved ATF Form 6 must be provided to the Customs Service [178.113]. See, also, question 56.

28. What may a licensed manufacturer do?

Licensed manufacturers may engage in the business of manufacturing explosive materials for purposes of sale or distribution, or for their own use, except that a licensed manufacturer-limited may only manufacture explosive materials for his own use. [55.11]

It is not necessary for a licensed manufacturer to also obtain a dealer's license to engage in business on his licensed premises as a dealer in explosive materials. [55.41]

29. Is a separate license required for each location where business is conducted?

Yes. A separate license is required for each location, but a separate license is not required for facilities used only for the storage of explosive materials. Also, a separate license is not required for a location used by the licensee solely for the storage of records relating to the business. [55.41]

30. Must a person who engages in the business of manufacturing and importing have separate licenses?

Yes. The licenses for manufacturing and importing allow a person to do separate and distinct things; a separate license is required for each activity. However, a manufacturer or an importer does not need a separate dealer's license in order to distribute explosive materials from his licensed premises. [55.41]

31. Does a licensed manufacturer need a separate license for his own on-site manufacture?

No. As long as the on-site manufacturing takes place in the ATF region in which the manufacturer's license is held. [55.41]

32. Are companies having headquarters in one State but doing business in another State required to have a permit in order to acquire explosive materials in the latter State?

No. Companies engaged in business within a State acquire residency in that State by virtue of the work being performed. Explosives purchases made by these companies in the State where work is being performed are considered to have been made within their State of residence; therefore, no permit is required. [ATF Ruling 76-4]

33. Does a licensed dealer need a permit to use explosives outside the State in which his business premises is located?

No. The dealer, by virtue of his license, is authorized to acquire and to transport explosives in interstate commerce. [55.41]

34. How does the truck driver for an explosives licensee/permittee qualify to purchase explosives for his employer?

The driver must be on the current certified list of representatives or agents authorized to acquire explosives on behalf of that employer. [55.105]

35. When an explosives licensee/permittee sends his truck driver to the distributor's premises for explosives which have been purchased by the licensee/permittee, will the driver be required to sign any forms?

The driver will be required to identify himself and to complete and sign Section A of Form 4721. [55.103]

36. Will a licensee or permittee be notified in advance when his license or permit needs to be renewed?

Yes. Prior to expiration of the license or permit, a licensee or permittee will be notified by way of Form 4706, Application for License Renewal; or Form 4708, Application for Permit Renewal, which must be timely filed in order to effect renewal. [55.46]

37. I have timely filed my application for renewal but I have not received my renewed license or permit. May I continue in business? If so, for how long?

Yes. You may continue to operate pursuant to your current license or permit until the application for renewal is acted upon. [5 U.S.C 558]

38. When may sales of explosives by licensed dealers be made to residents of adjoining States?

Sales may be made legally to the resident of a bordering State only if that State has enacted specific legislation allowing its residents to purchase explosive materials in a bordering State. (See question 5) [55.26, 55.105]

Recordkeeping

39. Does a person who obtains a license or permit have to keep records of explosive materials transactions?

Yes. A licensee or permittee must keep records of all acquisitions and dispositions of explosive materials. [55.107]

40. How does one account for explosive materials in his records?

If acquisitions are recorded by weight, then disbursements must also be recorded by weight. If acquisitions are recorded by physical count, then disbursements must also be recorded by physical count.

41. Must a permittee or licensee maintain a daily summary of magazine transactions?

Yes. After the initial inventory required by regulations has been taken, the inventory shall be entered in a record of daily transactions. At the close of business each day, explosives shall be recorded by class, in accordance with the three classes set forth in 55.202, as to the total quantity received in and removed from each magazine during the day and as to totals remaining on hand at the end of each day. [55.127]

42. Must I keep my explosives records on the site of the magazine to which these records pertain?

No. A licensee or permittee proprietor of an approved explosives storage facility may keep the records required by 27 CFR 55.127 at a centrally located area on the premises, provided a separate record of daily transactions for each magazine is maintained.

43. When must a report be made of a shortage or theft of explosive materials?

Any discrepancy which might indicate a theft or loss shall, within 24 hours, be reported by telephone to ATF (toll free: 800-424-9555). Licensees and permittees must confirm the report by filing a completed Form 5400.5 with the nearest ATF District Office. All other persons must confirm the report by letter to the nearest ATF office. A report must also be made to local authorities. [55.30, .165]

44. Where may I obtain additional copies of Form 5400.4 (4710)?

They are available at no charge from the ATF Distribution Center, 3800 S. Four Mile Run Drive, Arlington, Virginia 22206.

45. What forms will the buyer of black powder have to sign at the time of purchase?

If 50 pounds or less is being bought, intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or antique devices, no form is required. If black powder is being bought for any other purpose and in any amount, Form 4710 will be signed by the buyer.

46. Is there a requirement for an annual inventory?

An inventory is required to be taken at least once a year. Such inventory will be taken by type (blasting caps, dynamite, etc.) location and quantity. [55.122 through .125]

Storage

47. Who must meet storage requirements?

All persons who store explosive material shall store them in conformity with the provision of Subpart K of the regulations. [55.29, .164, .201]

48. What are the classes of explosives for storage purposes?

There are three categories of explosives materials:

1. High explosives. (For example, dynamite.)
2. Low explosives. (For example, black powder.)
3. Blasting agents. (For example, ammonium nitrate-fuel oil, and certain water gels.) [55.202]

49. May a person store explosives in a residence or dwelling?

No. A person may not store explosive materials in a residence or dwelling. Under certain conditions storage facilities may be located in a warehouse or in a wholesale or retail establishment. An outdoor storage facility must be located at a minimum distance from inhabited buildings and other objects in accordance with the applicable table of distances. [55.206, .208, .210, .211]

50. What is the "American Table of Distances?"

This table lists the minimum acceptable distances separating high explosives storage facilities from inhabited buildings, passenger railroads, public highways, and other explosives storage facilities. This table is reprinted in Section 55.218 of the regulations.

51. When low and high explosives are stored together, how is the distance determined to meet table of distance requirements?

The total weight is considered to be high explosive. The

table in Section 55.218 would apply.

52. Is it necessary to inspect one's storage facilities on a regular basis?

Yes. Any person storing explosives must inspect his storage facilities at intervals not greater than seven days to determine whether the contents are intact or if theft or unauthorized entry has occurred. [55.204]

53. What are the requirements for relocating an approved storage facility or making changes or additions to the same?

Notification is required in most cases. See Section 55.63 for details.

54. Is any type of black powder fuse exempted from storage requirements?

Yes, 3/32-inch and other external burning pyrotechnic hobby fuses are exempt from the explosives law and regulations. [55.11, "Ammunition;" 55.141]

55. With the exception of 3/32-inch pyrotechnic safety fuse for use in small arms, must black powder fuses in general be stored in approved storage facilities?

Yes. Igniter fuses, time fuses, blasting fuses, safety fuses, or other black powder fuses, by whatever name known, that are designed for use with high explosives in blasting operations must be stored in approved storage facilities. [55.11, "Ammunition;" 55.182]

56. Is smokeless powder for use in small arms ammunition subject to storage requirements?

No. Smokeless powder for use in small arms ammunition is exempt from this Part [27 CFR 55]. However, smokeless powder intended for this purpose is subject to control under 27 CFR, Part 178 as a component of ammunition. [55.141; 178.11, "Ammunition"]

57. My office building, in which several company employees work during the day in connection with my explosives business, is located in the general area of my explosives storage facility. Do the regulations and the Table of Distances apply to this office building as an inhabited building?

No. A building, such as an office building or repair shop, which is part of the premises of an explosives licensee or permittee and is used in connection with the manufacture, transportation, storage, or use of explosives materials is not an "inhabited building" as defined in 27 CFR 55.11.

58. I bought 12 sticks of dynamite to blast stumps on my property. I have four sticks left over. May I give them to my brother, who does not have a Federal explosives license or permit?

You may give them to your brother only if he resides in the same State in which you reside. If either you or your brother store the dynamite, storage must be in conformity with Federal regulations. [See question 47]

Fireworks (See ATF Ruling 79-8)

59. Are display fireworks considered to be explosives?

Yes. Display fireworks contain chemical mixtures which are classified as explosive in the Explosives List compiled by the Director, ATF. These fireworks fall within the category of low explosives, and are regulated in the same manner as are other low explosives. The Department of Transportation classifies display fireworks as Class B explosives.

60. What fireworks are exempted from regulation?

Common fireworks which are classified by the Department of Transportation as Class C explosives are exempted from regulation. Common fireworks are generally small, visible-effects fireworks, but also includes small firecrackers less than 1½-inch in length and ¼-inch in diameter with a pyrotechnic charge of less than two grains. A list of common fireworks is contained in 49 CFR 173.100(r)

61. Is a license required to manufacture fireworks?

No. A manufacturer of fireworks need only have a license if he manufactures fireworks ingredients which constitute explosive materials. (See question 63)

62. Are certain fireworks subject to Federal storage regulations?

Yes. All special or display fireworks which are defined by the Department of Transportation as class B explosives in 49 CFR 173.88(d) are considered to be low explosives and must be stored in Type 4 storage facilities. This class includes all fireworks which are designed to produce an audible effect and contain a pyrotechnic charge in excess of two grains. Items such as cherry

bombs, silver salutes, and M-80's are illegal fireworks banned from interstate commerce. (Exception — use by Government Agencies).

63. Would a manufacturer of common fireworks, which are exempt from regulation, need a permit in order to acquire explosives ingredients for fireworks he manufactures?

Yes, if he acquires such ingredients in interstate or foreign commerce.

64. Although a manufacturer of display fireworks has no manufacturer's license because he does not manufacture explosives ingredients for such fireworks, does he need a license to deal in display fireworks?

Yes, he would need a license to deal in display fireworks.

ATF Explosives Rulings and Procedures

Following are digests of ATF rulings on explosives matters which are of special significance to explosives licensees and permittees. The full texts of these rulings can be found in the ATF *Bulletin;* the appropriate *Bulletin* citation is listed following the ruling number at the end of each digest item. Also included is a digest of ATF Procedure 75-4, which was incorporated in Industry Circular 75-10.

Subject Index

1. Industry Circular 82-8 Elimination Form 5400.3 — Black Powder
2. Construction of Storage Facilities — Concrete Floors, (ATF Ruling 75-21)
3. Meaning of Terms, "Engaged in the Business," (ATF Ruling 75-31)
4. Identification of Explosive Materials, (ATF Ruling 75-35)
5. Meaning of Terms, "State of Residence," (ATF Ruling 76-4)
6. One Sale with Multiple Deliveries (ATF Ruling 76-10)
7. Alternate Magazine Construction Standards (ATF Ruling 76-18)
8. Storage of Electric Blasting Caps with other Explosive Materials (ATF Ruling 77-24)
9. Alternate Recordkeeping and Storage Requirements for Licensees Involved with Special Fireworks (ATF Ruling 79-8)
10. Explosives Storage Facility Descriptions, (ATF Procedure 75-4)

Industry Circular 82-8 (July 13, 1982)

Discontinuance of ATF Form 5400.3, Transaction Record for Black Powder to be Used in Antique Weapons

Elimination of Requirements. Effective immediately, ATF Form 5400.3 is eliminated. Explosives licensees and permittees distributing black powder in transactions qualifying under the exemption in 18 U.S.C. 845(a)(5) need not maintain sales records for such transactions. No revised form, recordkeeping or procedural requirement to replace ATF Form 5400.3 is contemplated. Obsolete provisions in the regulations will be deleted when 27 CFR Part 55 is next amended. Previously completed ATF Forms 5400.3 are subject to the 5-year retention period provided in regulations.

Obligations of Licensees. The black powder exemption in 18 U.S.C. 845(a)(5) states in substance that sales of commercially manufactured black powder in quantities of 50 pounds or less are exempt from regulation when the powder is itended to be used for sporting, recreational, or cultural purposes in antique weapons or antique devices. ATF Form 5400.3 served as an instrument to enable purchasers to identify themselves and to certify to licensees that the powder was intended for use in a manner which qualified for the statutory exemption. Despite the obsolescence of the form, licensees have an obligation under 18 U.S.C. 845(a)(5) to establish to their own satisfaction that purchasers acquiring black powder under the exemption intend to use the powder solely for exempted sporting, recreational, or cultural purposes.

The exemption applies to most retail sales of black powder. However, licensees are reminded that transaction records are required for non-exempt sales. For example, sales of black powder to non-licensees/non-permittees in quantities exceeding 50 pounds, or in any quantity when not intended for use as exempted in the law, require the completion of ATF Form 5400.4. In addition, other requirements in 27 CFR Part 55, unrelated to ATF Form 5400.3, continue to apply. These requirements include: (1) Storage of black powder by licensees in accordance with Subpart K; (2) Entries for black powder in the daily summary of magazine transactions (27 CFR 55.127); and, (3) Applicable inventory, receipt and disposition records (27 CFR 55.121 through 55.125).

Note: Under the exemption a nonpermittee or nonlicensee may import commercially manufactured black powder, in quantities of 50 pounds or less, solely for sporting, recreational or cultural purposes in antique firearms or devices. There is no form for delivery to customs and an individual importing under the exemption would have to comply with customs procedure at the port of entry.

27 CFR 55.207 & .210: Construction of Storage Facilities

ATF has held that explosives storage facilities with smooth-finished concrete floors that were constructed under contract for the use of the Department of Defense and that are presently being leased to licensees and permittees for the storage of commercial explosives are considered to be in compliance with the requirements for nonsparking floors, as set forth in 27 CFR 55.207(a)(4), 55.207(b), and 55.210, for the storage of all types of fully packaged explosives, pyrotechnics and propellants, with the exception of black powder. Any other such magazines which have smooth finished concrete floors and which meet or exceed the Department of Defense construction specifications will also be considered to be in compliance with the requirements of Part 55 with respect to nonsparking floors.

It is the responsibility of the licensee or permittee to provide verification that such facilities were manufactured under the Department of Defense specifications or that the facilities meet or exceed such specification standards.

If the Regional Director determines that the concrete floors of Type 1 or Type 4 explosives storage facilities do not meet the preceding requirements, he will require such floors to be covered with a nonsparking material, such as epoxy paint or mastic. ATF Ruling 75-21, 75 C.B. 67

27 CFR 55.11: Meaning of Terms "Engaged in the Business"

ATF has held that companies, such as public utility companies engaged in line and facility construction, which manufacture explosives on a regular or continual basis are considered to be engaged in the business of manufacturing explosive materials and must be appropriately licensed as required by 18 U.S.C. 842.

The term "Manufacturer" is defined in 18 U.S.C. 841(h) as "any person engaged in the business of manufacturing explosive materials for purposes of sale or distribution or for his own use."

Although the term "engaged in the business" is not susceptible to a rigid definition, it is generally interpreted to imply an element of continuity or habitual practice; such an element is clearly present in the operations of companies as outlined in paragraph one. Therefore, these companies are considered to be "engaged in the business" and must be licensed as explosives manufacturers. See ATF Ruling 75-31, 75 C.B. 65

27 CFR 55.109: Identification of Explosive Materials

The Bureau has held that any method, or combination of methods, for affixing the required marks to the immediate container of explosive materials, or outside container used in the packaging thereof, is authorized, provided the identifying marks (1) are legible, (2) show all required information and, (3) are not rendered undecipherable by extended periods of storage. Where it is desired to utilize a coding system and to omit printed markings on the container, a letterhead application displaying the coding to be used and the manner of its application shall be filed and approved by the Director, ATF, prior to the use of the proposed coding. Further, where a manufacturer operates his plant for only one shift during the day, the shift of manufacture need not be shown.

The above holding by ATF came in response to inquiries as to whether methods of affixing identifying marks to containers of explosive materials, other than the traditional stamping of the marks in ink or use of decals, could be authorized for use by licensed manufacturers under the provisions of 27 CFR 55.109.

It has been found that when explosive materials are stored for a period of time in polyethylene or other soft containers, the seepage of oil or other liquid components of the explosive material through the container walls will tend to render illegible the identifying marks on the container. A manufacturer proposed a more permanent method of marking plastic containers by using a system of perforated numbers and code symbols similar to that used on cancelled checks. This perforated coding would be in addition to other identifying marks stamped in ink on the container. The manufacturer contends that although the ink may become illegible, the perforated coding will continue to provide the identification required by 27 CFR 55.109.

Regulations in 27 CFR 55.109 provide in part that each licensed manufacturer of explosive materials shall legibly identify by marking all explosive materials he manufacturers for sale or distribution. The marks shall identify the manufacturer, location, date, and shift of manufacture. The manufacturer shall place the required mark on each cartridge, bag or other immediate container of explosive materials manufactured for sale or distribution, and also on

any outside container. ATF Ruling 75-35, 75 C.B. 65

27 CFR 55.11: Meaning of Terms "State of Residence"

ATF has held that, if a person is a corporation or other business entity, "State of residence" means the State in which such corporation or other business entity maintains a "place of business." A business entity establishing another "place of business" or "job site" in another State would acquire a "State of residence" in that State as well. For example, a company engaged in construction work would acquire a residence in each State wherein its work is performed. Its place of business in that State would be the job site at which business is carried on. It would not be essential to a determination of State of residence that a branch office be maintained in, or administrative work performed in, the States where job sites are located.

Such a company would not, therefore, need a permit to acquire explosive materials from a licensee in a State for use at job sites located therein. Form 4710, Explosives Transaction Record, would show the out-of-State address of the business entity as the principal place of business and the location of the job site as the local place of business.

ATF has also received inquiries as to whether licensees may lawfully distribute explosive materials to companies when the employees arranging the purchase and accepting delivery reside outside the distributor's State of residence.

The fact that an employee of a resident business entity does not reside in the same State as the distributor is immaterial. The purpose of the data requested on Form 4710 is to identify the person authorized by the business entity to make the purchase of explosive materials on the entity's behalf and to assure the distributor that such person appears on the required certified list of names of representatives or agents authorized by the business entity to acquire the materials. Regulations (27 CFR 55.105(e)), implementing in part Title 18, U.S.C. 842(f), provide that each business entity acquiring explosive materials shall furnish the * * * licensed dealer with a current certified list of the names of representatives or agents authorized to acquire explosive materials on behalf of such business entity. The purpose of the data requested on Form 4721, Explosives Delivery Record, is to identify the employee of the business entity or the employee of a carrier accepting delivery of explosive materials on behalf of the distributee at the distributor's business premises.

Thus, in the case of business entities, the information required on Forms 4710 and 4721 with respect to employees or agents arranging for the distribution is not for the purpose of establishing the residence of such persons but only for identification purposes. ATF Ruling 76-4, 76 C.B. 104

27 CFR 55.126: One Sale with Multiple Deliveries

Under the provisions of 27 CFR 55.126, a sale or other distribution by a licensee or permittee shall not be made to a nonlicensee or nonpermittee unless the transaction is recorded on a Form 4710, the duplicate of which shall be forwarded to ATF no later than the close of the next business day.

Under certain conditions, a single Form 4710 may be used to cover a series of deliveries. When an initial sale has been consummated, with partial deliveries to be made in the immediate future, the requirements of .126 will have been satisfied if the following steps are taken:

1. Form 4710 shall be executed at the time the initial sale is made although delivery of the explosive material is extended over a period of time not to exceed 30 days.
2. The duplicate Form 4710 shall be forwarded to the regional director on or before the close of business on the business day next succeeding that on which the initial sale is made. It shall include in the block provided for identifying the explosive materials (item 20 of Form 4710, Rev. 11-75) a statement that the Form 4710 covers delayed deliveries of the explosive materials specified therein.
3. The original Form 4710 retained by the licensee as part of his required records shall subsequently be noted to accurately reflect the date of each separate delivery and shall identify and describe each separate lot of explosive materials delivered.
4. In lieu of showing the separate deliveries on his retained copy of Form 4710, the proprietor may attach to such retained record a copy of the delivery record or a copy of the bill of lading or commercial invoice covering each delivery, provided that, as to each such delivery, the attachment contains the date of the delivery and all the information required by item 20 of Form 4710.

5. All other regulatory requirements and instructions relating to the completion of the form must be complied with. ATF Ruling 76-10, 1976 C.B., page 105.

NOTE: #2 no longer applicable

27 CFR 55.207; Construction of Type 1 Storage Facilities (Also 55.208, 55.209)

Under the provisions of 18 U.S.C. 8-12(j), it shall be unlawful for any person to store any explosive material in a manner not in conformity with regulations promulgated by the Secretary. In promulgating such regulations, the Secretary shall take into consideration the class, type, and quantity of explosive materials to be stored, as well as the standards of safety and security recognized in the explosives industry.

The regulations in 27 CFR 55.207, 55.208, and 55.209 prescribe types of storage facilities for explosive materials and provide, among other things, that such storage facilities shall be bullet resistant. 27 CFR 55.201(b) provides that alternate storage facilities may be authorized for the storage of explosive materials when it is shown that such alternate facilities are or will be constructed in a manner substantially equivalent to the standards of construction contained in the applicable regulations.

The term bullet-resistant means resistant to penetration of a bullet of 150 grain M2 ball ammunition having a nominal muzzle velocity of 2700 feet per second fired from a .30 caliber rifle from a distance of 100 feet perpendicular to the wall or door.

It has been determined that a wide range of construction criteria meet the bullet-resistant requirements of regulations for construction of stoage facilities for explosive materials.

In order to promote standards of safety and security in the storage of explosive materials while allowing the industry a wide latitude in the selection of construction material, it is *held* that storage facilities (magazines) that are constructed according to the following minimum specifications are bullet resistant and meet the requirements of the regulations as set forth in 27 CFR Part 55. (All steel and wood dimensions indicated are actual thicknesses. To meet the concrete block and brick dimensions indicated, the manufacturer's represented thicknesses may be used.)

(a) Exterior of ⅜-inch steel, lined with an interior of any type of nonsparking material.
(b) Exterior of ½-inch steel, lined with an interior of not less than ⅜-inch plywood.
(c) Exterior of ⅜-inch steel, lined with an interior of two inches of hardwood.
(d) Exterior of ⅜-inch steel, lined with an interior of three inches of softwood or 2¼ inches of plywood.
(e) Exterior of ¼-inch steel, lined with an interior of three inches of hardwood.
(f) Exterior of ¼-inch steel, lined with an interior of five inches of softwood or 5¼ inches of plywood.
(g) Exterior of ¼-inch steel, lined with an intermediate layer of two inches of hardwood and an interior lining of 1½ inches of plywood.
(h) Exterior of 3/16-inch steel, lined with an interior of four inches of hardwood.
(i) Exterior of 3/16-inch steel, lined with an interior of seven inches of softwood or 6¾ inches of plywood.
(j) Exterior of 3/16-inch steel, lined with an intermediate layer of three inches of hardwood and an interior lining of ¾-inch plywood.
(k) Exterior of ⅛-inch steel, lined with an interior of five inches of hardwood.
(l) Exterior of ⅛-inch steel, lined with an interior of nine inches of softwood.
(m) Exterior of ⅛-inch steel, lined with an intermediate layer of four inches of hardwood and an interior lining of ¾-inch plywood.
(n) Exterior of any type of fire-resistant material which is structurally sound, lined with an intermediate layer of four inches solid concrete block or four inches solid brick or four inches of solid concrete, and an interior lining of ½-inch plywood placed securely against the masonry lining.
(o) Standard eight-inch concrete block with voids filled with well-tamped sand/cement mixture.
(p) Standard eight-inch solid brick.
(q) Exterior of any type of fire-resistant material which is structurally sound, lined with an intermediate six-inch space filled with well-tamped dry sand or well-tamped sand/cement mixture.
(r) Exterior of ⅛-inch steel, lined with a first intermediate layer of ¾-inch plywood, a

second intermediate layer of 3⅞ inches well-tamped dry sand or sand/cement mixture and an interior lining of ¾-inch plywood.

(s) Exterior of any type of fire-resistant material, lined with a first intermediate layer of ¾-inch plywood, a second intermediate layer of 3⅞-inch well-tamped dry sand or sand/cement mixture, a third intermediate layer of ¾-inch plywood, and a fourth intermediate layer of two inches of hardwood or 14-gauge steel and an interior lining of ¾-inch plywood.

(t) Eight-inch thick solid concrete.

ATF Ruling 76-18, 1976, C.B. 106.

27 CFR 55.213

Storage of Electric Blasting Caps with other Explosive Materials

ATF has been requested to authorize the storage of electric blasting caps in a separate compartment of a type two portable magazine.

Under the provisions of 18 U.S.C. 842(j), it shall be unlawful for any person to store any explosive material in a manner not in conformity with regulations promulgated by the Secretary. In promulgating such regulations, the Secretary shall take into consideration the class, type, and quantity of explosive materials to be stored, as well as the standards of safety and security recognized in the explosives industry.

Regulations in 27 CFR 55.213 restrict the storage of blasting caps with other explosive materials. Section 55.201(b) provides that alternate storage magazines may be authorized for the storage of explosive materials when it is shown that such alternate magazines are or will be constructed in a manner substantially equivalent to the standards of construction contained in the applicable regulations.

The Bureau recognizes that the transportation and the storage of explosive materials in the same vehicle along with electric blasting caps is often desired. The Institute of Makers of Explosives has established a recommended standard for such transport in their Safety Library Publication No. 22, dated November 5, 1971 and revised March 1979. This standard prescribes the minimum construction criteria for (a) a container securely attached (1) above the cab of a vehicle (see Figure 1, Exhibit A), or (2) attached to the vehicle frame under the cargo compartment (see Figure 2, Exhibit A), or (b) a built-in compartment in the cargo space of the vehicle (see Exhibit B). In addition to motorized vehicles, consideration was also given for the use of similar criteria on portable wheeled trailers being used as magazines under section 55.208(a) of the regulations (see Exhibit E).

In order to insure standards of safety and security in the storage of explosive materials while allowing the industry a proper latitude in the construction of magazines, it is held that vehicles used for transporting and for storing explosive materials that are constructed in conformity with the standards listed below, and in compliance with all other safety and security provisions contained in Part 55, i.e., effectively immobilized when unattended, will meet the requirements of ATF regulations. Even though constructed on the same vehicle, each compartment will be considered as a separate magazine. The two magazines on the vehicle will, however, be considered as one magazine when applying the American Table of Distances.

Construction Standards for Storage of Electric Blasting Caps (Non Mass-Detonating)

a. The container or compartment must provide for total enclosure of the electric blasting caps.

b. The partition between the explosives storage compartment and the electric blasting cap compartment must be of laminate construction consisting of a A/C grade or better exterior plywood, gypsum wall board and low carbon steel plates. In order of arrangement, the laminate must conform to the following, with minimum thickness of each lamination as indicated: ½ inch plywood, ½ inch gypsum wall board, ⅛ inch low carbon steel, and ¼ inch plywood, with the ¼ inch plywood facing the explosives storage compartment. See Exhibit C for details of laminate construction. The door to the electric blasting cap compartment must be of metal construction or solid wood covered with metal, the outside walls and top must be of the same construction as the rest of the vehicle or trailer. If high explosives, or bullet sensitive explosive materials are stored in the vehicle, then the storage compartment of the vehicle must be constructed so as to be bullet resistant.

c. As an alternative to the construction requirements shown in paragraph b, a container for use only as illustrated in Exhibit A may be used when constructed as follows:

1. The top, lid or door, and the sides and bottom of each container must be of laminate construction consisting of A/C grade or better exterior plywood, solid hardwood, gypsum board, and sheet metal. In order of arrangement, the laminate must consist of the following with the minimum thickness of each lamination as indicated: ¼-inch plywood, 1-inch solid hardwood, ½-inch plywood, ¼-inch gypsum board and 22-gauge sheet metal constructed inside to outside in that order. See Exhibit D for detail of laminate construction.
2. The hardwood must be fastened together with wood screws, the ½-inch plywood must be fastened to the hardwood with wood screws, the inner ¼-inch plywood must be fastened to the hardwood with adhesive and the 22-gauge sheet metal must be attached to the exterior of the container with screws.

d. The laminate composite material must be securely bound together by waterproof adhesive or other equally effective means.

e. The steel plates at the joints of laminations must be secured by continuous filet welds.

f. All interior surfaces of the container or compartment must be constructed so as to prevent contact of contents with any sparking metal.

g. There must be direct access to the container or into a compartment from outside the vehicle.

h. Each container or compartment must have a snug fitting continuous piano-type hinged lid or door equipped with a locking device (or devices).

i. Without permitting direct access to contents under normal conditions, the locking or hinging mechanisms must permit at least one edge of the lid or door to rise or move outward at least ½-inch when subjected to internal pressure.

j. The exterior of the container or compartment must be weather resistant. ATF Ruling 77-24, 1977 C.B., page 191

EXHIBIT "A"

PERMANENTLY MOUNTED CONTAINERS

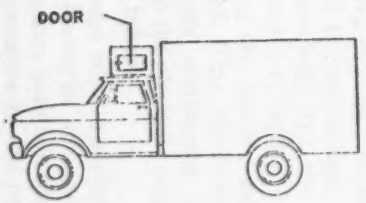


FIGURE 1

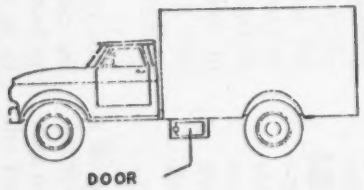


FIGURE 2

NOTE: THE CONFIGURATIONS SHOWN IN FIGURES 1 AND 2 ARE EQUALLY APPLICABLE TO MULTI-AXLE AND "CAB-OVER" VEHICLES.

EXHIBIT "B"
COMPARTMENTS

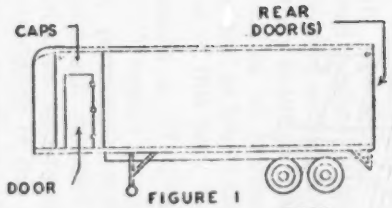


FIGURE 1

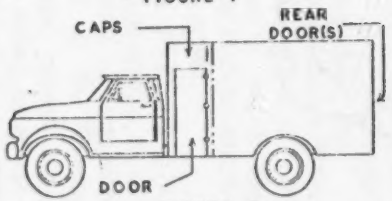


FIGURE 2

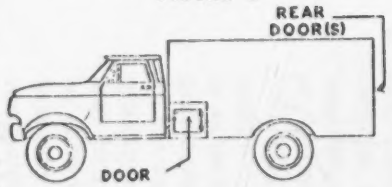
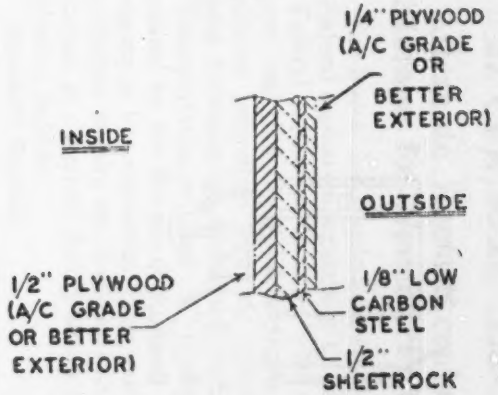


FIGURE 3

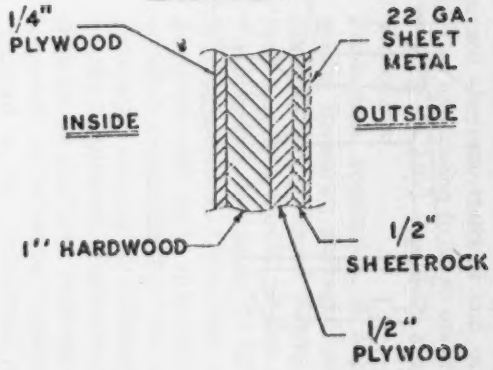
NOTE: THE CONFIGURATIONS SHOWN IN FIGURES 2 AND 3 ARE EQUALLY APPLICABLE TO MULTI-AXLE AND "CAB-OVER" VEHICLES.

EXHIBIT C



SKETCH OF LAMINATE CONSTRUCTION FOR CONTAINER OR COMPARTMENT FOR E.B. CAPS. USE AS ILLUSTRATED IN EXHIBIT A, B, AND E.

EXHIBIT D



SKETCH OF LAMINATE CONSTRUCTION FOR CONTAINER FOR E.B. CAPS RESTRICTED TO USE AS ILLUSTRATED IN EXHIBIT A.

Exhibits A-D
Ruling 77-24

EXHIBIT-E

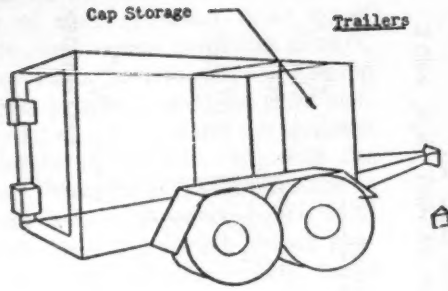


Figure 1

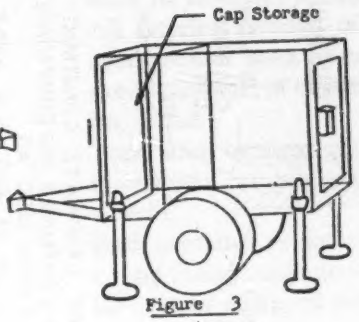


Figure 3

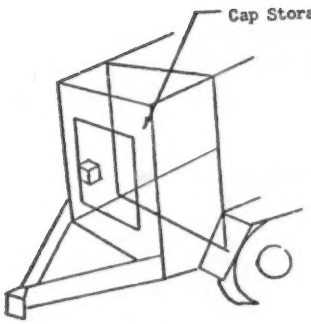


Figure 2

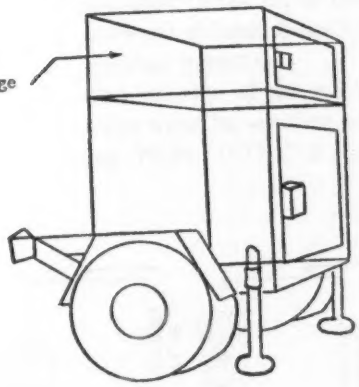


Figure 4

Exhibit E
Ruling 77-24

27 CFR 55.22, .122-.127.

Alternate Recordkeeping and Storage for Special Fireworks

The Bureau has concluded a study of the effect of Federal explosives regulations on the operations of Federal explosives licensees who manufacture, import, and deal in special fireworks and Federal explosives permittees who use special fireworks. Special fireworks are classified by the Department of Transportation as Class "B" explosives and are regulated by the Bureau of Alcohol, Tobacco and Firearms as low explosives. Their manufacture and distribution require the manipulation of explosive materials in a manner that is utterly unique in the explosives industry.

A. Alternate Records

Regulations in 27 CFR 55.22 allow the Director to approve alternate methods or procedures subject to stated conditions when he finds that:

(1) Good cause has been shown for the use of the alternate method or procedure;

(2) The alternate method or procedure is within the purpose of, and consistent with the effect intended by, the specifically prescribed method or procedure and is substantially equivalent to that specifically prescribed method or procedure; and

(3) The alternate method or procedure will not be contrary to any provision of law and will not result in an increase in cost to the Government or hinder the effective administration of this part.

The regulations in 27 CFR 55.122, 55.123, 55.124 and 55.125 require the preparation of detailed, separate permanent records of explosive materials received and disposed of. The Bureau finds that entries on commercial records may, subject to the conditions of this ruling, be acceptable as alternative records instead of the separate records required by regulations. In addition the Bureau has determined that the requirement for recording the quantity of explosive materials may be met by recording the number and size of special fireworks articles. This determination applies to permanent records maintained by licensees and permittees and to the alternate recordkeeping provisions described below.

Held, licensees who manufacture, import and deal in special fireworks and permittees who use special fireworks may maintain records as described below, as an alternative to the requirements of 27 CFR Part 55. In order to comply with the regulations, licensees or permittees desiring to utilize the proposed alternate methods and procedures must submit an application to do so under the provisions of 27 CFR 55.22(a) regarding alternate methods and procedures.

1. **Production, acquisition, or importation of special fireworks; packaged complete displays; and packaged display segments such as grand finales.** In lieu of the record requirements of sections 55.122(b), 55.123(b), 55.124(b), and 55.125(c), the licensee or permittee may upon approval use invoices or other commercial records when such documents contain all information required by the regulations. Furthermore, the quantity of explosive materials produced, imported, or otherwise acquired may be recorded on the commercial record by showing the number and size of special fireworks articles. These invoices or other commercial records will be acceptable substitutes for required records if they are (a) filed in an orderly manner, (b) kept separate from records of materials other than fireworks, and (c) readily available for inspection on the licensed premises.

2. **Distribution of special fireworks; packaged complete displays; and packaged display segments.** In lieu of the record requirements of sections 55.122(c), 55.123(c) (1), 55.124(d), and 55.125(c), the licensee or permittee may upon approval use invoices or other commercial documents when such documents contain all information required by the regulations. Furthermore, the quantity of explosive materials distributed may be recorded on the commercial record by showing the number and size of special fireworks articles. These invoices or other commercial records will be acceptable substitutes for required records if they are (a) filed in an orderly manner, (b) kept separate from records of materials other than fireworks, and (c) readily available for inspection on the licensed premises.

B. Preparation of the Explosives Transaction Record, ATF Form 4710 (5400.4)

The regulations in 27 CFR 55.126 provide that a licensee or permittee shall not sell or otherwise distribute explosive materials to any person, other than another licensee or permittee, unless he records the transaction on an Explosives Transaction Record, Form 4710, which shall contain all of the

information as indicated by the headings and instructions thereon:

Held, the item on Form 4710 requesting the identification of quantity, size and type of explosive materials including name of manufacturer and all manufacturer's marks of identification may be completed by identifying a commercial invoice. The identified commercial invoice must contain all the information required on the form and such invoice or a copy thereof must be attached to the Form 4710. Further, the requirement for identifying the quantity of explosive materials on Form 4710 may be met by recording the number and size of special fireworks articles.

C. Storage requirements

Under 27 CFR 55.205 of the regulations, explosive materials that are in the process of manufacture or are being physically handled in the operating process of a licensee or permittee do not have to be kept in storage facilities meeting the standards of regulations. The Bureau has determined that explosive materials that have been entered into the manufacturing process for special fireworks, as well as those contained in special fireworks that are partially assembled, should be considered explosive material in the process of manufacture. In addition, as special fireworks in a finished state flow through display packing buildings or areas, they should be considered explosive materials that are being physically handled in the operating process of a licensee or permittee.

Held, the following explosive materials, subject to the stated conditions, are not considered subject to the storage requirements of 27 CFR Part 55 while they are on the premises of a licensee or permittee pursuant to 27 CFR

1. Dry explosive powders and mixtures that have been entered into the manufacturing process for special fireworks articles;
2. Unfinished special fireworks articles; and
3. Individual special fireworks articles and packaged display segments that are received into designated packing buildings or areas for sorting, temporary storage, and packing into complete display units.

D. Preparation of the daily summary of magazine transactions

The regulations in 27 CFR 55.127 provide that at the close of business each day each licensee and permittee shall record by class of explosive materials, as prescribed in the explosives list, the total quantity received in and removed from each magazine during the day and the total remaining on hand at the end of the day.

Held, licensees and permittees may:

1. Maintain daily magazine summary records at any location on the business premises provided the records separately identify each magazine; and
2. Record the quantities of explosive materials received in and removed from the magazine during the day and the total remaining at the end of the day by showing, as applicable to the magazine contents:
   (a) The number and size of individual special fireworks articles in a finished state; or
   (b) The number of packaged display segments or packaged displays.

ATF Ruling 79-8, ATFB 1979-1, page 27

27 CFR 55.41: General Explosives Storage Facility Descriptions

In ATF Procedure 75-4, which became effective November 1, 1975, the Bureau revised requirements for descriptions of explosives storage facilities that are filed by applicants intending to store explosive materials. (This Procedure is incorporated in Industry Circular 75-10.)

The Director, ATF, has determined that this additional descriptive information is required in order to insure compliance with the law and regulations. Accordingly, Form 4705, Application for License, and Form 4707, Application for Permit, have been revised. Following is the text of the Procedure, beginning with Section 3.

Sec. 3. Licenses. A person intending to engage in business as an importer, a manufacturer of, or a dealer in, explosive materials shall complete Form 4705, Application for License, in accordance with the instructions on the form, and forward the forms with the license fee to the office specified on the form. If approved, the Regional Regulatory Administrator (RRA) will issue a license and return a copy of the application to the applicant. At the time of renewal of a license the RRA may require the licensee to file a new or amended application, or additional descriptive pages to be attached to the application, upon a determination that the licensee's currently approved application is inaccurate or does not fully describe the storage facilities. If the application is denied, the applicant will be advised in writing of the reasons for the denial.

Sec. 4. Permits. A person intending to acquire, transport, ship, import or receive explosive materials in interstate or foreign commerce for his own use and not for resale shall complete Form 4707,

Application for Permit, in accordance with the instructions on the form and forward the forms with the permit fee to the office specified on the form. If approved, the RRA will issue a permit and return a copy of the application to the applicant. At the time of renewal of a permit the RRA may require the permittee to file a new or amended application, or additional descriptive pages to be attached to the application, upon a determination that the permittee's currently approved application is inaccurate or does not fully describe the storage facilities. If the application is denied, the applicant will be advised in writing of the reasons for the denial.

Sec. 5. Storage. .01 If explosive materials are to be stored, the requirements of 27 CFR Part 55, Subpart K — Storage, must be complied with before the application will be approved. An applicant for a license or permit who intends to store explosive materials shall fully describe the intended storage facilities to support the applicant's affirmation that the storage facilities meet the requirements set forth in 27 CFR Part 55, Subpart K — Storage.

.02 The description should, as a minimum, include the following information:

(a) The type of magazine (building, igloo, tunnel, portable box, portable trailer, etc.)

(b) The location and distance from applicant's place of business.

(c) The distance to the next nearest storage magazine.

(d) A description of significant terrain features and physical structures, such as buildings, roads, utilities and other facilities which could be damaged if the magazine exploded. Indicate the distance between the magazine and the feature.

(e) The materials (including dimensions and thicknesses) used for the structure (e.g. concrete, corrugated iron over wood, plywood, tin and earth, etc.)

(f) The security, physical safeguards, locks, safety equipment, and anti-theft measures.

(g) The dimensions and capacity of each magazine.

(h) The class of explosive materials to be stored in each magazine.

(i) The owner(s) of the magazine, if other than the applicant.

(j) The names and telephone numbers of individuals who could open the magazines for inspection by ATF officers.

(k) Any special conditions, such as inaccessibility in winter, etc.

Sec. 6. Effective Date. The effective date of this procedure is November 1, 1975.

Sec. 7. Inquiries. Inquiries regarding this ATF Procedure should refer to its number and be addressed to the office of your RRA.

ATF Procedure 75-4, 75 C.B. 79

Explosives License/Permit Numbering System Expanded

Digit	Stands For
1	Alcohol, Tobacco and Firearms Region
2,3	State-Alpha designation
4,5,6	County of State where business is conducted
7,8	Type of License
9,10	Expiration Date code
11-15	Sequence Number of License

Form Approved: OMB No. 1512-0131 (8/31/82)

Name

2. License No. 9 CA 001 20 H9 00001

3. Expiration Date Aug. 1. 1983

5. Class of License and Explosives 20

MANUFACTURER OF:
20. High Explosives
21. Low Explosives
22. Blasting Agents

DEALER IN:
26. High Explosives
27. Low Explosives
28. Blasting Agents

IMPORTER OF:
23. High Explosives
24. Low Explosives
25. Blasting Agents

MANUFACTURER (LIMITED) OF:
30. High Explosives
31. Low Explosives
32. Blasting Agents

4. Issued by Regional Regulatory Administrator, ATF, at (Address)

6. Signature of Regional Regulatory Administrator

ATF Form 4706 (5400.14) (12-81) Part 1 PREVIOUS EDITIONS ARE OBSOLETE

License (18 U.S.C. Chapter 40, Explosives)

In accordance with the provisions of Title XI, Organized Crime Control Act of 1970, and the regulations issued thereunder (27 CFR Part .55) you are licensed to engage in the business specified in item 5 of the license, within the limitations of Chapter 40, Title 18, United States Code, and the regulations issued thereunder, until the expiration date specified in item 3 of this license.

Department of the Treasury
Bureau of Alcohol, Tobacco and Firearms

SEE "WARNING" ON BACK

Effect of Title XI on the Fireworks Industry

Title XI of the Organized Crime Control Act of 1970 (18 U.S.C. Chapter 40) establishes controls over explosive materials, including black powder and other pyrotechnic compositions commonly used in fireworks. Part 55 of Title 27, Code of Federal Regulations (CFR), contains the regulations which implement Title XI.

Section 55.141(h) exempts from regulation "the importation and distribution of fireworks in a finished state, commonly sold at retail for personal use in compliance with State laws or local ordinances." This section does not exempt "special fireworks," often referred to as "display fireworks," which are classified by the Department of Transportation as Class "B" explosives (see Question and Answer section for additional information on fireworks). The exemption applies only to "common fireworks" in a finished state classified by Department of Transportation regulations as Class "C" explosives (49 CFR 173.100).

Who Needs a License?

1) Manufacturers of black powder;

2) Manufacturers of any other explosive material used in manufacturing "special fireworks" (Class "B" explosives) or "common fireworks" (Class "C" explosives); and

3) Importers of or dealers in "special fireworks."

Who Needs a Permit?

1) A person acquiring or transporting "special fireworks" interstate for his own use and not for resale. Agencies of the United States or of any State or political subdivision thereof are exempt from permit requirements; and

2) A person, other than a licensee, acquiring or transporting explosive materials interstate for use in manufacturing "special fireworks" or "common fireworks," unless the materials consist of black powder of an exempt quantity.

Frequently, persons contracting for display fireworks (such as would be appropriate for Fourth of July observances, from an out-of-state dealer receive a total service, including the services of a pyrotechnician who transports display fireworks in interstate commerce to the site of the display and conducts or supervises the display. In these instances, the customers purchase the dealer's services rather than the explosive materials themselves, and the cost of the services includes the dealer's expense in providing the fireworks utilized. When business is transacted in this manner, the customers purchasing and receiving the services need not obtain Federal permits since they are not actually acquiring explosive materials outside their States of residence, nor are they receiving such materials or causing them to be transported in interstate commerce. If the dealer furnishing the services is a licensee, his interstate transportation of explosive materials to the display sites would be conduct authorized by his license.

Types of Permits

1) User permit: allows a permittee to acquire, transport, ship and receive "special fireworks" in interstate or foreign commerce for his own use and not for resale. This permit is issued at a cost of $20.00 for a one-year period and is renewable at a cost of $10.00, for a three year period.

2) User-limited permit: identical to the user permit but issued for a single transaction only at a cost of $2.00; non-renewable. A new permit must be obtained for each transaction. This type of permit is advantageous to civic and veterans organizations who wish to conduct a single display such as on the Fourth of July.

Storage

The law prohibits any person from storing any explosive materials in a manner not in conformity with the regulations promulgated by the Secretary of the Treasury (18 U.S.C. 842(j)). Pursuant to this section, the Secretary has prescribed storage regulations in 27 CFR Part 55, Subpart K. Since display fireworks are not exempt from regulations, they must be stored in conformity with regulations. Display fireworks generally contain perchlorate mixture explosives, potassium chlorate base explosive mixtures, and black powder, all of which are designated as explosives on the List of Explosive Materials (printed in this publication) compiled by the Director, ATF, and which fall within the definition of low explosives in 27 CFR 55.202 (b). Thus, display fireworks should be stored as low explosives in facilities meeting the requirements for Type 4 storage facilities, prescribed by 27 CFR .210 unless they contain other classes of explosives. The manufacturer of exempt or non-exempt fireworks

having stocks of explosive materials on hand to be used in the manufacture of fireworks must store his stocks in conformity with applicable storage requirements. In storage facilities where weight restrictions apply, the net weight of the explosive materials may be used. To determine the actual weight of the explosive materials it may be necessary to contact the manufacturers.

Basic Explosives Dealer's and User's Guide to Federal Explosives Regulation

* EXPLOSIVES MAY NOT BE DISTRIBUTED BY LICENSEES TO ANY PERSON WHO:

- Is under 21 years of age
- Has been convicted of a crime punishable by imprisonment for a term exceeding one year
- Is under indictment for a crime punishable by imprisonment for a term exceeding one year
- Is an unlawful user of marihuana or any depressant or stimulant or narcotic drugs
- Has been adjudicated a mental defective
- Is a fugitive from justice
- May not lawfully purchase, possess or use such explosives under State or local laws applicable at the place of distribution

* DEALERS IN EXPLOSIVES MUST:

- Have a Federal license
- Have proper storage facilities
- Keep accurate and complete records
- Verify that each out-of-State buyer has a Federal permit
- Have nonlicensees or nonpermittees execute Form 5400.4, Explosives Transaction Record
- Have employees of buyers or carriers to whom delivery is made at a distributor's premises execute Form 5400.8, Explosives Delivery Record
- Verify buyer's identity

* USERS OF EXPLOSIVES: PERMITTEES AND NONPERMITTEES

Federal permits are required of those who purchase explosives from outside their State of residence and/or transport them interstate. The permittee must keep complete and accurate records of his acquisitions and dispositions of explosives.

Nonpermittees may buy and use explosives in their State of residence without obtaining a Federal permit. They must give proper identification to the dealer and execute Form 5400.4, Explosives Transaction Record.

NO PERSON SHALL STORE ANY EXPLOSIVE IN A MANNER NOT IN CONFORMITY WITH REGULATIONS

ALL PERSONS WILL PROMPTLY REPORT TO ATF AND LOCAL AUTHORITIES ANY LOSS OR THEFT OF THEIR EXPLOSIVES

A FEDERAL LICENSE OR PERMIT DOES NOT CONFER ANY RIGHT OR PRIVILEGE TO VIOLATE ANY STATE LAW OR LOCAL ORDINANCE

The above summary is general and does not purport to convey fully the Federal explosives law and regulations pertaining to dealers and users.

* Under Public Law 93-639 and implementing regulations, transactions involving commercially manufactured black powder, in quantities of 50 pounds or less, for sporting, recreational or cultural purposes in antique firearms or antique devices have been largely deregulated. For further information, see the special article headed "Black Powder Transactions."

Black Powder Transactions

As a result of Public Law 93-639 and implementing regulations:

(1) An exemption now exists which allows a nonpermittee or nonlicensee to purchase commercially manufactured black powder, in quantities of 50 pounds or less, solely for sporting, recreational or cultural purposes in antique firearms or antique devices virtually without regulation.

(2) A nonlicensee or nonpermittee purchasing black powder under the exemption need not be a resident of the State in which the dealer is located. Also, the categories of persons to whom the distribution of explosive materials is prohibited do not apply to black powder transactions made under the exemption.

(3) Acquisitions of black powder not qualifying under this exemption are subject to the same regulatory requirements that govern any other low explosive.

(4) All persons who sell black powder, regardless of quantity, must be licensed as explosives dealers and must provide adequate storage.

Emphasize Explosives Security

Through prompt reporting of losses or thefts of explosives and increased emphasis on physical security, explosives licensees and permittees can contribute greatly to efforts by Federal, State and local authorities to reduce the incidence of bombings in the United States.

The following actions are of prime importance:

REPORT thefts or losses of explosives from magazines, premises and job sites promptly, by telephone, to ATF (toll free: 800-424-9555) and appropriate local and/or State authorities. Because the States and many municipalities have designated specific agencies

to investigate the theft or loss of explosives, licensees and permittees are urged to be familiar with local and State reporting procedures and appropriate contact points.

FOLLOW UP on telephone notification with a written report on ATF Form 5400.5, Report of Theft or Loss - Explosive Materials, to the nearest ATF District Office.

OBSERVE activity around magazines, within business premises, and on job sites, particularly if strangers appear to be loitering in the area in which explosives are being kept. On-site users should take special care to assure that explosives removed from storage for use on the job are either detonated or accounted for and returned to storage.

REVIEW recordkeeping practices to assure that no discrepancies exist and that no figures in reported inventories have been manipulated, and correct any clerical errors promptly.

If any questions arise concerning explosive security procedures or any aspect of explosives regulation coming under the jurisdiction of ATF, do not hesitate to contact the Bureau.

For More Information

The Bureau publishes a quarterly general-information booklet, the Alcohol, Tobacco and Firearms Bulletin. The ATF Bulletin is the Director's means for informing all permittees and licensees on current alcohol, tobacco, firearms, and explosives matters. It contains regulatory, procedural, and administrative information, as well as items of general interest that warrant your attention.

This publication may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The Alcohol, Tobacco and Firearms Bulletin costs $12.00 (domestic) and $15.00 (foreign) for a 1-year subscription. A single copy is $4.00 (domestic) and $5.00 (foreign).

Checks should be made payable to the Superintendent of Documents.

U.S. GOVERNMENT PRINTING OFFICE : 1982 O - 393-465